

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CRIMINAL APPEAL No.153 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This criminal appeal is preferred by the Accused No.10 aggrieved by the judgment rendered in Sessions Case No.408 of 2007 by the learned I Additional Sessions Judge at Machilipatnam, Krishna District.

It is relevant to notice that charge-sheet is filed in Crime No.111 of 2002 of Koduru Police Station, Krishna District for attacking and causing death of one Sri Bade Arjuna Rao, while injuring PWs.3 and 5, on 06.11.2002, for the offences alleged to have been committed under Sections 120-B, 148, 302 read with 149 IPC and Section 27 read with Section 7 of Arms Act. Accused No.10 is stated to be the State Level Executive Committee member of C.P.I (ML) Janasakthi Party, being closely associated with Kondapalli Seetharamayya of Peoples War Group. A-1 and A-11 are the sons of A-10, while A-2 to A-9 and A-13 are his followers. Accused No.13 is stated to be the District Committee Member of C.P.I (ML) Janasakti Party. It is also one of the allegations in the charge-sheet that A-10 has extorted huge sums of money from businessmen on behalf of Janasakthi party.

Since, A-2 and A-12 could not be proceeded against immediately as they were absconding, hence, the case against them was split up and the rest of the accused were tried in Sessions Case No.106 of 2005. They were acquitted on 17.10.2007. Subsequently, A-2 and A-12 were arrested on 03.11.2007 and hence, proceeded against in Sessions Case No.408 of 2007.

When A-10 was apprehended by the police on the intervening night of 21/22.12.2002, a sum of Rs.80,000/- is stated to have been

recovered from his possession, which is kept in his handbag. According to the charge-sheet, this money represented the extorted money. The remand report dated 22.12.2002 refers to the recovery of Rs.80,000/-, apart from a fire arm and ammunition. Further, when A-10 was once again produced before the learned Magistrate, on 23.12.2002, he made a statement, which is recorded, by the learned Additional Judicial Magistrate of First Class, Avanigadda, that the money belongs to Rytu Coolie Sangham of which A-10 was the President and that it does not represent extorted money.

S.C.No.106/2005 was decided on 17.10.2007. On behalf of the prosecution, PWs.1 to 32 were examined and Exs.P1 to P46 got marked and material objects MOs.1 to 23 were also marked. MO.9 is a black zip bag, while MO.10 was cash of Rs.80,000/-, MO.20 is pistol, while MO.21 is the ammunition, which objects are stated to have been recovered at the time when A.10 was apprehended. Since the prosecution failed to prove the case beyond reasonable doubt, A.1, A.3 to A.11 and A.13 are acquitted. Since the criminal case was spilt against A.2 and A.12, MOs.1 to 23 are directed to be sent back to the Court of Additional Judicial Magistrate of First Class, Avanigadda where PRC.No.27/2004 was pending against A.2 and A.12. Dealing with MOs.10 and 20, which are seized from the possession of A.10, it was observed that they are not the case property involved in the crime. It is the case of the prosecution that the said property is the subject matter of crime No.103/2002 of Thotlvaluru Police Station, which crime after investigation was numbered as C.C.No.368 of 2003 on the file of I Metropolitan Magistrate, Vijayawada against A.10. For failure to produce the said sum of Rs.80,000/- before the Court which tried C.C.No.368/2003, A.10 was acquitted. Therefore, in the judgment rendered in S.C.No.106/2005, it was noted that instead of producing the cash of Rs.80,000/- recovered from A.10 before the Court which tried C.C.No.368/2003, the same was erroneously

produced before the Court which tried S.C.No.106 of 2005. Hence, in the judgment rendered in S.C.No.106/2005, the observation was made that while dealing with the Sessions case arising out of PRC.No.27/2004, appropriate order for the disposal of the said material objects be passed.

A.2 and A.12 were apprehended soon after the rest of the accused were acquitted on 17.10.2007. They are tried in S.C.408/2007 and the Court by its judgment on 28.08.2008 acquitted them too.

Towards the end of the said judgment in S.C.No.408/2007, the Court noted that a sum of Rs.80,000/- which was recovered from possession of A.10, which was claimed that the cash belongs to Rytu Coolie Sangham. Since no satisfactory evidence is produced in that direction, learned Sessions Judge felt that it is not proper to direct return of the said cash and therefore, ordered the same to be confiscated to the State. Hence, to the extent of ordering the confiscation of Rs.80,000/- the present appeal is preferred.

The entire question that requires to be considered is when case property which is not connected to the crime in question is produced before the Criminal Court, is the Criminal Court justified in ordering its confiscation to the State.

As was already noticed supra, it is the case of the prosecution in S.C.No.106/2005 that cash of Rs.80,000/- was recovered from the possession of A.10 at the time of his arrest in the intervening night of 21/22.12.2002. In fact the remand report dated 22.12.2002 records this fact when A.10 was again produced before the learned Magistrate on 23.12.2002, he made a statement that the money of Rs.80,000/- belongs to Rytu Coolie Sangham. The reason assigned for confiscating this money to the State by the learned Sessions Judge was that there is no satisfactory evidence produced that the money belongs to the Rytu Coolie Sangham. We are of the opinion that an

incorrect approach is adopted in the matter. It is for the prosecution to lead evidence with reference to the material objects produced by them and connecting the same to the crime and the accused. The burden shifts to the accused only upon any such evidence being produced. In the absence of any evidence linking MO.10, cash of Rs.80,000/- to the crime in question in S.C.No.106/2005, there was no necessity for the accused in general and for A.10 in particular to produce any further evidence. Therefore, there was no justification for confiscating the cash of Rs.80,000/- to the State on the ground satisfactory evidence was not produced by the accused. All the more so, when the said MO. No.10 is not connected to the crime in question.

However, the question that we need to address was whether the said cash of Rs.80,000/- can be directed to be restored to A.10. The record clearly discloses that he disowned the said money and urged that it belongs to Rytu Coolie Sangham. Therefore, the proper course to be adopted was to restore possession of the said money to said Rytu Coolie Sangham.

It is brought to our notice that a Savings Bank Account bearing No.35107410463 is opened at Koduru Branch of State Bank of India in the name of Andhra Pradesh Rytu Coolie Sangham. It would therefore be appropriate to direct the sum of Rs.80,000/- to be transferred to the aforementioned account either by way of deposit or otherwise.

Accordingly, this criminal appeal is allowed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

18.01.2016

Sp/ska