

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1485 of 2016

ORDER:

This Criminal Revision Case, under Section 397 read with 401 of Cr.P.C is filed the petitioners/3rd parties aggrieved by the order, dated 02.03.2016, in CrI.M.P No.392 of 2012 in C.C.No.49 of 2008 passed by the Special Judge for SPE & ACB Cases-cum-III Additional Sessions Judge, Vijayawada.

2. The case of the prosecution is that the respondent police raided the house of one Sri G.Baji Gopal Rao, who is husband of petitioner No.1, father of petitioner Nos.2 and 3 and family friend of petitioner No.4, alleging that he possessed disproportionate assets and seized the property documents of the said Baji Gopal Rao and petitioners and filed charge sheet against the said Baji Gopal Rao, which was numbered as C.C.No.49 of 2008. Subsequently, the said Baji Gopal Rao died and calendar case was dismissed as abated on 16.08.2010. After death of Baji Gopal Rao, petitioners 1 to 3, who are the legal heirs of deceased Baji Gopal Rao, requested the respondent police to return the property documents by raising attachment order in CrI.M.P No.17/2004.

3. The petitioners herein are third parties and they filed the aforementioned criminal miscellaneous petition under Sections 451 and 457 Cr.P.C. seeking to return all the property documents by duly raising the attachment order in CrI.M.P No.17 of 2014. The Court below, after considering the material available on record, partly allowed the petition directing the petitioners to execute personal bond for Rs.10.00 lakhs each and shall undertake that they will file civil suit within six (06) months from the date of that order. On executing personal bond, the petitioners are entitled for return of property documents. If the petitioners did not file the civil suit to establish their

entitlement as stated above, the respondent is at liberty to file a suit as per law. The properties and claims of the petitioners are subject to result of the civil suit and the Court did not express its opinion on merits of the case and the Court referred to the above facts and allied aspects are only for the purpose of disposal of the petition. Aggrieved by the same, the present revision case is filed by the petitioners.

4. This Court heard the arguments of learned counsel for the petitioners and perused the record.

5. After perusing the record, this Court is of the view that the Court below would not have entertained the application filed under Section 451 Cr.P.C., in view of termination of the proceedings before the concerned Court. Admittedly, an asset case was registered against the deceased G.Baji Gopal Road for the check period from 18.08.1970 to 20.02.1984 and the same was withdrawn by the Government during pendency of C.C. No.54 of 1987 on the file of ACB Court, Visakhapatnam. It is also brought to the notice of this Court that the present case was dismissed abated on account of death of the accused, but the interim attachment order passed earlier attaching the properties covered under the documents in question was made absolute. Hence, the approach of the petitioners by invoking the provisions of Section 451 Cr.P.C. is not sustainable. This Court is the view that the petitioners can approach the concerned Court by way of filing a petition under Section 13 of the Criminal Law Amendment Ordinance Act, 1944, for return of property documents.

6. Accordingly, the Criminal Revision Case is allowed setting aside the order, 02.03.2016, in CrI.M.P No.392 of 2012 in C.C.No.49 of 2008 passed by the Special Judge for SPE & ACB Cases-cum-III Additional Sessions Judge, Vijayawada. However, petitioners shall file an application under Section 13 of the Criminal Law Amendment Ordinance Act, 1944, for return of the properties, before the Court

concerned and thereafter, the same shall be considered and pass appropriate orders in accordance with law, expeditiously. Miscellaneous petitions, if any, pending in this revision case shall stand closed.

RAJA ELANGO, J

JULY 14, 2016

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Date: 14.07.2016

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