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*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   **CRL.M.C. 596/2016 & Crl.M.A. No.2510/2016 (Exemption)**

Date of Decision: 27th April, 2016

SUKHDEEP SINGH ..... Petitioner
Through: Mr. Akhilesh Arora, Mr. Naveen Bhardwaj Advocates

versus

STATE ..... Respondent
Through: Mr. Rajat Katyal, Additional Public Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

O R D E R

P.S.TEJI, J

Crl.M.A. No.2510/2016

1. Exemption allowed subject to just exceptions.

CRL.M.C. 596/2016

2. The present petition has been filed under Section 482 of the Code of Criminal Procedure for issuance of directions to quash the order dated 21st May, 2015 passed by the learned Metropolitan Magistrate, Delhi and the order dated 15th July, 2015 passed by the Revisional Court of learned Additional Sessions Judge, Delhi and thereby issuance of direction for Investigating Officer/SHO of Police Station Paschim Vihar for releasing

the funds of the petitioner seized during the course of investigation of FIR bearing no.255/2015 registered under Sections 3, 4 & 9 of the Delhi Public Gambling Act, 1956 at Police Station Paschim Vihar, on superdari.

3. The facts giving rise to the present petition are within the narrow compass and to the extent necessary, have been mentioned hereinafter. As per the version of the petitioner, the petitioner along with his other colleagues was running committees. For the purpose of collecting the instalments and bids to release the committee, the meetings were fixed on first or second day of each month. It is contended by learned counsel for the petitioner that on the same line, on 1st April, 2015, a meeting was held for the collection of instalment and release of committee funds and this committee was fixed for a sum of Rs.3,00,000/- having fifteen members for a period of fifteen months. It was next contended by learned counsel for the petitioner that on the alleged day, when a meeting was going on, police officials from Police Station Paschim Vihar came there and enquired, when the members of the committee informed them about the filing of committee. However, the police officials gave this meeting a colour of their choice and planted a false story of gambling for their own self glorification and thus falsely implicated the petitioner. It is alleged that a sum of Rs.25,000/- and mobile phone of Carbon-Machone make were seized by the police during investigation. Learned counsel for the

petitioner has submitted that the money seized i.e. Rs.25,000/- included an amount of Rs.20,000/- towards monthly instalment for the committee and remaining Rs.5,000/- for his personal usage.

4. It is submitted by learned counsel for the petitioner that the petitioner undertook to furnish indemnity bond/security bond for the funds proposed to be released in his favour in order to secure the case property as and when the need arose. However, the application for this purpose was dismissed by the learned Metropolitan Magistrate on the ground that the same could be decided only after the final outcome of the case as the fate of the instruments of gambling would depend upon the conviction or the acquittal of the accused persons.

5. In support of his submissions, learned counsel for the petitioner relied on the judgment dated 10th September, 2009 passed by this Court in Crl.M.C. Nos.4485/2013 & 16055/2013 titled ***Manjit Singh v. State***.

6. On the other hand, the State had taken a stand which was contrary to the version of the petitioner. As per the State, an information was received to the effect that in House No.A4/209A, Paschim Vihar, New Delhi, a few persons were gambling which involved money in which owner of the house was also involved. When police officials along with SHO raided the said house, they saw that certain persons were gambling with playing cards and some money was also kept on the floor. It was also contended that some persons were holding playing cards in their

hands along with tokens which were red, green, blue and yellow in colour. The police made recovery of three packets of playing cards, Rs.2,37,000/- cash, seventeen mobile phones and 281 tokens.

7. Vide order dated 15th July, 2015, the learned Additional Sessions Judge held that cash of Rs.2,37,000/- is case property and that the same cannot be released to the petitioner at that stage. It was also held by learned ASJ that fourteen persons were apprehended and that it could not be believed that a committee was organized between the petitioner and other members. It was the case of the prosecution that the amount was recovered from the floor and some amount was carried by the petitioner and other persons. However, the carbon – Machone mobile was released to the petitioner on superdari nama for a sum of Rs.6,800/- and the currency note being case property, was not released to the petitioner at that stage.

8. I have heard learned counsel for the parties and perused the available records including the judgment cited by learned counsel for the petitioner. It is clear from the record that the amount was recovered by the police from the floor while the petitioner along with other persons was gambling with playing cards. It is also on record that three packets of playing cards, a sum of Rs.2,37,000/-, 17 mobile phones and 281 tokens were recovered by the police. The accused persons were charge-sheeted under Sections 3, 4 & 9 of Delhi Public Gambling Act, 1955.

Section 6 of the Delhi Public Gambling Act, 1955 reads thus:-

> "When any cards, dice, gambling tables, cloths, boards or other instruments of gambling are found in any house, room, tent, enclosure, space, vehicle, vessel or place entered or searched under the provisions of the last preceding section or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear that such house, room, tent, enclosure, space, vehicle, vessel or place is used as a common gaming-house and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer or any person assisting him."

9. Section 8 of the Delhi Public Gambling Act, 1955 reads thus:-

> "On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed and may also order all or any of the securities for money and other articles seized not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled."

10. A bare reading of Sections 6 & 8 of Delhi Public Gambling Act, 1955, clearly establishes that the currency notes seized by the police cannot be released as the same were the case property. The revision petition preferred by the petitioner to the extent of release of the currency notes, was rightly dismissed by the learned Additional Sessions Judge. If a direction for release of the said currency notes seized by the police is

given during the pendency of the matter before the Trial Court, then there is a possibility that the petitioner might not return the case property/currency notes and thus, the entire purpose of the trial would be defeated. Further, in the case of ***R. Gopalkrishnan v. Union of India (UOI) through CBI 2004 (3) PLJR 434***, the Court held that it would not be appropriate to release the offending articles at this stage since the evidences are yet to be led at trial and credibility of document had to be considered by the Trial Court. However, the request for release of the mobile phone on superdari was rightly conceded to by the learned ASJ.

11. It is an admitted fact that the case is at the stage of prosecution evidence and the contention regarding money alleged to be involved in the gambling or not, is a matter of trial and no comment on the same can be made at this stage.

12. For the aforementioned reasons, I do not find any infirmity in the order dated 21st May, 2015 passed by the learned Metropolitan Magistrate and the order dated 15th July, 2015 passed by the learned Additional Sessions Judge.

13. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

APRIL 27th , 2016
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