

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

+ **CRL.M.C. 766/2016**

Date of Decision : February 29th, 2016

VIJAY KUMAR TALWAR

..... Petitioner

Through Mr.Subhash Oberoi, Adv.

versus

STATE & ANR

..... Respondents

Through Mr.Mukesh Kumar, APP for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for quashing/setting aside the order dated 23.11.2015 passed by the learned Additional Sessions Judge in revision petition upholding the order dated 07.10.2015 passed by the learned Metropolitan Magistrate and also for issuance of direction for the release of sum of Rs.48,645/- to the petitioner.

2. The facts culled out from the petition are that on 15.07.1991, the police officials of Police Station Rajinder Nagar had arrested some persons including the petitioner in FIR No.67/1991 dated 15.07.1991

under Sections 3/4/5/9/55 of the Gambling Act, Police Station Rajinder Nagar. A sum of Rs.48,645/- was shown to have been recovered from the petitioner. The petitioner was acquitted vide judgment dated 27.07.2000 and the same has attained finality as no challenge to the same has ever been made. It is further mentioned that on 10.09.2015, the petitioner came to know from co-accused Prem Kumar that the learned MM released the amount recovered from co-accused Prem Kumar by the police. On 07.10.2015, the petitioner moved an application before the learned MM for the release of amount of Rs.48,645/- but the same was dismissed vide order dated 07.10.2015. Thereafter, the petitioner preferred a revision petition which was also dismissed vide order dated 23.11.2015. Being aggrieved by the orders passed by the Courts below, the present petition has been filed by the petitioner.

3. I have heard the arguments advanced by the learned counsel for the petitioner as well as learned APP for the State.

4. Argument advanced by the learned counsel for the petitioner is that the case property confiscated is retained by the State on trust basis. When the accused has been discharged, the State is duty bound to return the case property. It is further argued that the petitioner has been discriminated as the similarly situated co-accused has already been refunded the confiscated money. It is further submitted that as per Section 458 Cr.P.C., if any person fails to establish his claim to case property within six months, then only the Magistrate may order the sale of such property. Notice of the application for disposal of the case property which was released to the co-accused was never

received by the petitioner.

5. By way of the present petition, the petitioner is claiming the refund of a sum of Rs.48,645/- which was alleged to have been recovered from him at the time of registration of FIR No.67/1991, under Section 3/4/5/9/55 of the Gambling Act, Police Station Rajinder Nagar. The claim of the petitioner is that he has been acquitted in the said case vide judgment dated 27.07.2000 and one of the co-accused, namely, Prem Kumar has already been released the amount recovered from him in the same case.

6. Perusal of order dated 07.10.2015 passed by the learned MM shows that the application of the petitioner for release of amount was dismissed while observing that the earlier application of the case property has already been disposed of on 10.09.2015, hence the application of the petitioner-herein was not maintainable. The learned ASJ dismissed the revision petition vide order dated 23.11.2015 while observing that no judgment of the Trial Court was annexed with the application.

7. The petitioner has miserably failed to show that money confiscated by the Court below was not the case property. Even the copy of the judgment passed by the Court below has neither been annexed with the present petition nor produced in the Court. The non-establishment of the claim that the money was not the case property, leads to the inference that the money confiscated was the case property

8. Section 452 Cr.P.C. provides for disposal of the case property at conclusion of the trial. As per this Section, upon conclusion of the

trial, the Court may make order for disposal, destruction, confiscation or delivery of the case property to any person claiming to be entitled to possession thereof. But, in the absence of the judgment of the Trial Court or any other material, it cannot be said with certainty whether any order was passed by the Trial Court with regard to disposal or confiscation of the case property.

9. In such a scenario, this Court is of the considered opinion that the petitioner has failed to make out any case for setting aside the orders passed by the Courts below or to direct for the release of amount, as claimed.

10. Consequently, the present petition is dismissed.

FEBRUARY 29, 2016
dd

(P.S.TEJI)
JUDGE

