

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.05.2017

CORAM

THE HONOURABLE DR.JUSTICE T.MATHIVANAN

CRL.R.C.No.170 of 2017

Tmt.Santhi

..Petitioner/Petitioner

- Vs -

The State by
Additional Superintendent of Police,
Head Quarters,
Vigilance and Anti-Corruption,
Chennai-16

..Respondent/Respondent

Prayer : Criminal Revision Petition is filed under Section 397 r/w. 401 of Cr.P.C. as against the order dated 22.12.2016 and made in Crl.M.P.No.2383 of 2016 on the file of the learned Special Judge (Under Prevention of Corruption Act), Chennai.

For Petitioner: Mr.AR.L.Sundaresan, Sr.Counsel
for Mr.L.Dhamodaran

For Respondent: Mr.E.Raja
Addl.Public Prosecutor (V&A.C.)

O R D E R

This memorandum of Criminal Revision is directed under Sections 397 r/w. 401 of Cr.P.C., as against the order dated 22.12.2016 and made in Crl.M.P.No.2383 of 2016 on the file of the learned Special Judge (Under Prevention of Corruption Act), Chennai.

2. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner and Mr.E.Raja, learned Additional Public Prosecutor, (V&A.C.) for the respondent.

3. The petitioner herein is the wife of one Mr.K.Jayaraman, Former Chief Engineer, Highways Department, Chepauk, Chennai, against whom a case in Crime No.2/AC/2016/CC-II has been registered on the file of the respondent/Police alleging that he had committed an offence punishable under Sections 13(2) r/w. 13(1)(e) and 13(1)(d) of Prevention of Corruption Act, 1988.

4. The above said case seems to have been registered against the said K.Jayaraman on 14.11.2016. Apparently the case is now under investigation.

5. It is significant to note here that no case is registered against the petitioner.

6. It is manifested from the records that one Mr.V.Chandran, General Secretary, Anti-Corruption movement, Chennai had filed a complaint before the respondent Police on 01.01.2016 as against the petitioner's husband K.Jayaraman alleging that he had amassed wealth which is in excess to his known sources of income. When the complaint was under scrutiny, the informer Mr.V.R.Chandran had filed a petition before this Court in CrI.O.P.No.1512 of 2016 seeking a direction as against the respondent Police to register a case as against K.Jayaraman (husband of the petitioner). This Court had directed the respondent Police to file a status report. In compliance to the order of this Court, the respondent Police had filed a status report before this Court, after conducting a preliminary enquiry in PE No.179/2016/HD/CS-III. Thereafter, the above said petition in CrI.O.P.No.1512 of 2016 was disposed of with a direction to the respondent Police to register a case as against the petitioner's husband K.Jayaraman, provided any prima-facie case is made out against him and accordingly, the said petition was closed on 19.08.2016.

7. According to the respondent, the preliminary enquiry revealed the commission of cognizable offence under the provisions of Prevention of Corruption Act and therefore, the respondent Police happened to register a case in Cr.No.2/AC/2016/CC-II under Section 13(2) r/w. 13(1)(d) and 13(1)(e) of Prevention of Corruption Act on 14.11.2016.

8. It is to be noted that the petitioner's husband K.Jayaraman was functioning as Chief Engineer, Construction and Maintenance Wing, Highways Department, Chennai (now retired).

9. That on 15.11.2016, during the course of investigation, the investigating officer had conducted a search at the residence of the petitioner at Flat No.B-31, Old No.16, 1st Floor, Krishnam Apartment, P.T.Rajan Salai, K.K.Nagar, Chennai. While so, a sum of Rs.26,68,000/- was seized in cash and 88 documents were also seized. Besides this, the respondent Police had searched the bank locker on 24.11.2016 at Central Co-operative Bank, Salem, jointly operated by the petitioner herein and her husband Mr.K.Jayaraman. While so, 263 gms of gold jeweleries were found. The said locker was locked and sealed and the key was produced before the trial court.

10. On the same day, i.e., on 24.11.2016 another locker maintained by the petitioner and her daughter at Indian Bank, Fairland Branch, Salem jointly was searched in the presence of the petitioner and her husband as well as in the presence of Bank Officials. While so, 1328.300 gms of gold jewels were found in the above said locker and subsequently, it was placed in the same locker and locked. The seized keys were produced before the Trial Court.

11. Under this circumstance, the petitioner had approached the trial court with a petition in CrI.M.P.No.2383 of 2016 under Section 451 of the Code of Criminal Procedure to return the properties as detailed hereunder:-

a) Rs.26,68,000/- cash seized from the premise on 15.11.2016.

b) Keys of the locker bearing No.19/3, Central Co-operative Society Ltd., Fairlands (ladies) Branch, Salem and locker No.95, Indian Bank, Fairlands Branch, Salem.

12. This petition was contested by the respondent by filing their objection.

13. On hearing both sides, the learned Trial Judge had proceeded to dismiss the petition on the following grounds:

a) On perusal of Form-95, out of Rs.26,68,000/-, an amount of Rs.12,00,000/- bears the slip of Canara Bank, Namakkal Branch and another amount of Rs.5,00,000/- bears a slip of Lakshmi Vilas Bank. Hence the contention of the petitioner that the amount was withdrawn by her from Indian Bank, Salem Branch cannot be decided at this stage.

b) All the sale deeds produced by the petitioner were effected between the years 2007 - 2013 and falls within the check period.

c) The petitioner has not produced any registration or licence to show that she was doing real estate business.

d) Though the petitioner's daughter had filed an affidavit stating that the jewels kept in the locker No.95, Indian Bank belonged to her, she had not produced any materials to substantiate her claim.

e) In respect of locker No.19/3, Central Co-operative Bank Ltd., an assessment report was filed alleging that 263 gms of gold were found and in the Indian Bank locker bearing No.95, 1328.300 gms of gold were found and even the contention of the petitioner as well as the prosecution regarding the disclosure of gold in the property statement of the petitioner varies and the same cannot be decided at this stage.

14. Since the case is in the stage of investigation, the learned Trial Judge had proceeded to dismiss the petition.

15. Section 451 of the Code of Criminal Procedure (in short it may herein after be referred to as Code) deals with Order for custody and disposal of property pending trial in certain cases.

Section 451 of the Code reads as under:

'When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, "property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody.
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.'

16. The above section envisages that for the proper custody of such property which is produced before any criminal court during an inquiry or trial, the Court may make such order, as it thinks fit. It is to be noted here that the paramount consideration is proper custody of such property which is produced before any criminal court.

17. As decided in *Ashok Kumar v. State of Bihar* (AIR 2001) SCW 2314) by the Apex Court, the power under S.451, Cr.P.C. should be exercised expeditiously and judiciously during inquiry of trial keeping in mind various purposes, namely:-

(1) The owner of the article would not suffer because of its remaining unused or by its misappropriation.

(2) The Court or police would not be required to keep the article in safe custody; and

(3) If proper Zimanama before handing over possession of the article is prepared, that can be used in the evidence instead of its production before the Court during the trial. If necessary, evidence should also be recorded describing the nature of the property in detail.

18. In pursuant to the case registered in Crime No.13/AC/06 for the offences under section 7 and section 13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 as against the petitioner therein, a search was conducted in the residence of the petitioner. While so, an amount of Rs.6,07,500/- was seized. After investigation, charge sheet was laid and the same was

taken on the file of the Special Court as Special Case No.4 of 2008. The petitioner therein filed an application in CrI.M.P.No.1025/2011 to return the amount seized. The Court below had dispensed the petition initially. Though a case in Crime No.24/AC/2007 for the offence under section 13(1)(e) of Prevention of Corruption Act, 1988 was registered against the petitioner for holding assets disproportionate to his known source of income, it's further action was dropped, subsequently.

19.This Court has therefore, observed that there can be no embargo against return of money seized to the petitioner. On the following conditions:

(a) getting detailed proper panchanama prepared of such notes. The detailed panchanama of the currency notes in question should be drawn by such Court Officer as designated by the learned Special Judge and Chief Judicial Magistrate, Chengalpattu, in the presence of two panchayatdars and in the actual physical presence of the Presiding Officer of the trial Court.

(b) causing a videograph of such currency notes at the expense of the petitioner. The videograph shall be taken in the presence of such Court Officer as designated by the learned Special Judge and Chief Judicial Magistrate, Chengalpattu and two panchayatdars and the same shall be preserved by the trial Court to be marked during trial. A certificate is to be recorded by the court officer as also the two panchayatdars and the person recording the videograph informing the place, time of recording the same. Such certificate shall also be marked along with the videograph in the course of trial.

(c) after taking self bond to the extent of Rs.6,07,500/- from complainant with one surety for the like sum.

20.This Court in another case in Panneerselvam v. State of Tamil Nadu represented by the Inspector of Police, Sivakasi East Police Station, Sivakasi, Virudhunagar District and Others (2017) 1 MLJ (CrI) 42 has observed in Paragraph No.18 as under:

"18.Section 451 Cr.P.C., deals with giving of interim custody of the case property. It also deals with disposal of the case-property. But, such disposals all are pending conclusion of the trial of the case. Under Section 451 Cr.P.C., the Court can pass appropriate orders. In fit and appropriate cases, the Court can even give permission to sell the case property and use the cash. But, while doing so, the court must keep in it's mind the principles laid down by the Hon'ble Supreme Court in

Sunderbhai Ambalal Desai v. State of Gujarat 2003 (1) CTC 175 (SC): AIR 2003 SC 638 : (2002) 10 SCC 283 : LNIND 2002 SC 624. The Court must take care of the plight of the victim and also the interest of the prosecution".

"19. Because rival claims have been made, without enquiring into the same, the Court cannot simply dismiss the property return petition. If there is a case, there will be a counter case. But, there should be a judicial order deciding the disputed matter / rival claim".

21. Ultimately in Paragraph No.27 of the said Judgment, this Court has ordered as follows:-

- (i) This revision is allowed.
- (ii) The impugned order, dated 30.06.2015, passed in Crl.M.P.No.4781 of 2015, by the learned Judicial Magistrate, Sivakasi, is set aside.
- (iii) The learned Magistrate will give interim custody of 7 $\frac{3}{4}$ sovereigns of jewels to the revision petitioner.
- (iv) The learned Magistrate will return the cash Rs.14,25,000/- to the revision petitioner, after recording the currency note numbers in the Property Register, if not already recorded.
- (v) The revision petitioner will execute a personal bond for Rs.17,25,000/- (Rupees seventeen lakhs and twenty five thousand only) to the satisfaction of the said Magistrate.
- (vi) It is made clear that no property document, Solvency Certificate or surety shall be insisted upon.
- (vii) A photograph of the jewels with the signature of the revision petitioner shall be kept in the case records.
- (viii) The revision petitioner is permitted to spend the cash Rs.14,25,000/-.
- (ix) Until final property order is passed by the Trial Court, the revision petitioner shall not dispose of, alter or change the said jewels.
- (x) The revision petitioner shall cause the production of the said jewels as and when so ordered by the Court.

22. The Apex Court has also, in Sunderbhai Ambalal Desai v. State of Gujarat 2003 (1) CTC 175 (SC) in Paragraph No.7 has observed as under:-

"7. In our view, the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1.Owner of the article would not suffer because of its remaining unused or by its misappropriation;
- 2.Court or the police would not be required to keep the article in safe custody;
- 3.If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
- 4.The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further change of tampering with the articles".

23. Paragraph Nos.11, 12 and 13 also assumes importance:

"With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. At the earliest.

For this purpose, if material on record indicates, that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (1)preparing detailed proper panchnama of such articles;
- (2)taking photographs of such articles and a bond that such articles could be produced if required at the time of trial; and
- (3)after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451, Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person

to whom the custody is handed over. Still however, it would be the function of the Court under Section 451, Cr.P.C. to impose any other appropriate condition."

24. On coming to the instant case on hand, the petitioner being the wife of Mr. Jayaraman, Chief Engineer, Construction and Maintenance Wing, Highways Department, Chennai against whom a case in Crime No.2/AC/2016/CC-II under section 13(2) r/w 13(1) (e) and 13(1)(d) of Prevention of Corruption Act, 1988 has been registered, is not an accused in the above said case. What she would state is that in pursuant to the case registered against her husband, respondent had conducted a search in their house premises on 15.11.2016 and seized the amount of Rs.26,68,000/-. Subsequently, the respondent had taken up inventories in respect of the jewellery kept in the above said lockers on 24.11.2016. However, the articles in the locker were not seized and the keys of the locker were not taken away by them. She would further state that the amount seized by the respondent during the search of their house on 15.11.2016 was the amount withdrawn from the bank and the same was also properly accounted and audited and the tax was also paid by her to the Income Tax Authorities. As far as the lockers are concerned, locker No.95 of Indian Bank, Fairland Branch, Salem is operated jointly by her and her daughter. Her jewels as well as of her daughter were kept in the said lockers. As per the report of the Authorities golden jewellery weighed about 1,328.300 grams were found kept in the lockers.

25. According to the petitioner, the seized amount of Rs.26,68,000/- was withdrawn from her bank and kept in her house for the business purposes and family needs. She would further state that seizing of the cash would certainly cause great hardship to meet the expenditure involved in continuing business.

26. On the other hand, learned Public Prosecutor, V & A.C. has submitted that on the question of accountability raised, the petitioner and her son Thiru.J.S.A.Arun had informed that they did not know anything about the said cash and his father Thiru.Jayaraman alone knows about it. When Mr.Jayaraman was contacted through mobile phone, he had informed that the above said cash was withdrawn in instalments for the past one month from the account of the petitioner bearing Account No.744311329, Indian Bank, Fairlands Branch, Salem. On investigation, it was ascertained that the petitioner had withdrawn an amount of Rs.5,00,000/-, Rs.4,00,000/-, Rs.2,00,000/-, Rs.2,00,000/-, Rs.7,00,000/- and Rs.2,50,000/- from the above said Account Number being maintained in Indian Bank, Fairlands Branch, Salem on 18.10.2016, 20.10.2016, 27.10.2016, 28.10.2016, 31.10.2016 and 05.11.2016 respectively.

27. Learned Public Prosecutor has also contented that the petitioner and her husband or other family members had not properly explained about the seized money, and therefore, he has vehemently objected to return the money. He has further submitted that the order of the Court below did not require any interference of this Court. From the materials available on record, this Court finds that the case in Crime No.2/AC/2016/CC-II is still under investigation on the file of the Addl. Superintendent of Police, Head Quarters, Vigilance and Anti-Corruption, Chennai. As observed by the Apex Court *Sunderbhai Ambalal Desai v. State of Gujarat* 2003 (1) CTC 175 (SC) cited supra, the Court may for the purpose of returning the seized article, follow the procedure of recording the evidences as enunciated under section 451 of Cr.P.C. The Apex Court has also laid down certain conditions, such as

- (1) preparing detailed proper panchnama of such articles;
- (2) taking photographs of such articles and a bond that such articles could be produced if required at the time of trial; and
- (3) after taking proper security.

28. It is also observed that still, however, it would be the function of the Court under section 451 of Cr.P.C to impose any other appropriate condition. Keeping in view of the above fact, this Court while setting aside impugned order of the Court below, directs the Court below to return the seized amount to the petitioner on condition stipulated here under:

As aforesaid, the case is still under investigation. Until the contrary is proved, it is presumed that the petitioner is the owner of the seized money because the money was seized from the residential premises of the petitioner during the course of search. Therefore, it is ordered that:

- (1) The seized money shall have to be handed over to the petitioner.
- (2) Prior to it's handing over, a detailed appropriate panchanama with reference to the serial numbers of the currency notes as well as its denomination, shall be prepared.
- (3) Photographs on the currency notes shall be taken and a bond, that such currency notes could be produced if require at the time of trial shall be executed by the petitioner and apart from giving appropriate security.

29. In the result, the Criminal Revision is allowed. The seized amount of Rs.26,68,000/-, which is under the custody of Special Court, is ordered to be returned to the petitioner on

condition that the amount shall be deposited in any one of the Nationalized Bank in Fixed Deposit scheme (FDR) and the receipt shall be produced before the Trial Court.

30. The interest that may be earned from the deposited amount is also liable to be accounted. In case, at the end of the trial, it is decided that the amount is disproportionate to the known source of the income of the petitioner, the same shall be forfeited including the accrued interest.

31. The keys of the lockers bearing No.19/3, Central Co-operative Society Ltd., Fairlands (ladies) Branch, Salem and locker No.95, Indian Bank, Fairlands Branch, Salem are ordered to be handedover to the petitioner. The petitioner is at liberty to keep the keys described above until further orders. With reference to the Jewelleries kept in the above said lockers, the petitioner is directed to produce the photograph of the same before the Court. The petitioner is directed to withdraw the accrued interest on the deposited amount once in three months and he is liable to account for the interest received from the deposited amount before the Trial Court.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssn/pam
To

1. The Special Judge (Under Prevention of Corruption Act), Chennai.
2. Additional Superintendent of Police, Head Quarters, Vigilance and Anti-Corruption, Chennai.
3. The Manager, Central Co-Operative Society Ltd., Fairlands (Ladies) Branch, Salem.
4. The Manager, Indian Bank, Fair lands Branch, Salem.

+ 1 cc to Mr.L. Dhamodaran, Advocate Sr.37803
+ 1 cc to the Public Persecutor, High Court, Madras.SR.37855

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BR(CO)
EU 30.06.2017