

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HON'BLE MR.JUSTICE S.BASKARAN

Crl.A.No.856 of 2016

1.C.Sethupathy

2.Lakshmi Devi

.. Appellants

vs.

The State,
Represented by
Inspector of Police,
CBI/ACB/Chennai.
(In Crime No.RC27 (A)/2010)

... Respondent

Criminal Appeal filed under Section 454 Cr.P.C. to set aside the order passed in Crl.M.P.No.17 of 2016 in Spl.C.C.No.2 of 2011, dated 16.09.2016 on the file of the learned District Judge/Special Judge for CBI cases at Karaikal.

For Appellants : Mr.V.Krishnakumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor for CBI

O R D E R

The appellants have come forward with the petition seeking to set aside the impugned order under challenge whereby, the claim of the petitioners is to return a sum of Rs.2,07,000/-, which is kept under the custody of the trial Court in Spl. C.C.No.2 of 2011 on the file of the learned District Judge/Special Judge for CBI cases at Karaikal.

2. The learned counsel for the appellants submitted that the appellants were charged for the offences under Sections 13 (2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 and under Sections 109 I.P.C r/w 13(2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 and a case was registered in C.C.No.2 of 2011. During the course of investigation, the

respondent conducted search in the appellants' house and took a sum of Rs.2,07,000/- on 02.07.2010 and the said amount has not been marked as material object. After trial, both the appellants were acquitted by the trial Court in C.C.No.2 of 2011 by the order dated 28.01.2015. Therefore, the appellants filed a petition in Crl.M.P.No.17 of 2016 seeking return of Rs.2,07,000/- and the same was dismissed by order dated 16.09.2016 stating that as the appeal against acquittal is pending, the amount cannot be returned to the appellants. Hence, the appellants have come forward with the present Criminal Appeal for return of the said amount.

3. The learned Special Public Prosecutor filed counter wherein, it is stated that during the course of investigation, an amount of Rs.2,07,000/- was seized and deposited in the Court of Special Judge for CBI Cases, Kariakal. On completion of trial, the trial Court acquitted the appellants by its order dated 28.01.2015. Challenging the order of acquittal, the CBI preferred an appeal in Crl.A.No.744 of 2015 and the same is pending. It is further stated that the said amount of Rs.2,07,000/- is a usufruct of crime, for which the appellants were not able to satisfactorily account for and liable to be attached during the appeal before this Court. In such circumstances, if the amount is returned to the appellant, it will cause prejudice to the appeal. Hence, the appellants are not entitled to return of cash. Therefore, the present Criminal Appeal is liable to be dismissed.

4. Heard the learned counsel for the appellants and the learned Special Public Prosecutor and perused the materials available on record.

5. Considering the facts and circumstances of the case particularly the fact that the case in C.C.No.2 of 2011 against these appellants ended in acquittal and considering the reason stated by the appellants that the amount of 2,07,000/- which was taken by the respondent at the time of search is kept under the custody of the trial Court, this Court feels that it is just and proper to allow this appeal. At this stage, for return of money, the appellants have filed a memo dated 5.1.2017 and the same reads as follows:

"1.The appellants appeal is for the return of Rs.2,07,000/-

2.The appellants undertake not to claim any further amount in this matter."

6. The Memo dated 5.1.2017 is recorded. Considering the plea stated in the memo that the appellants only sought for the return of Rs.2,07,000/- and they will not claim any further

amount, the order passed in Crl.M.P.No.17 of 2016 in Spl.C.C.No.2 of 2011, dated 16.09.2016 on the file of the learned District Judge/Special Judge for CBI cases at Karaikal is set aside and the Criminal Appeal stands allowed.

7. The learned trial Judge, is directed to return the amount of Rs.2,07,000/- to the appellants, which is lying in the credit of Spl.C.C.No.2 of 2011, dated 16.09.2016 on the file of the learned District Judge/Special Judge for CBI cases at Karaikal subject to the out come of Crl.A.No.744 of 2015 and after obtaining an affidavit of undertaking from the appellants stating that they will not claim return of any other property involved in the case till disposal of Crl.A.No.744 of 2015 and they will appear before the Court as and when directed to do so.

sd/
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cla

To

- 1.The Sessions Judge,
Karaikal.
- 2.The Special Public Prosecutor, for CBI,
High Court, Madras.
- 3.The Inspector of Police,
CBI/ACB/Chennai.
- 4.The District Judge,
Judge for CBI,
Karaikal.

+1cc to Mr.V.Krishnakumar, Advocate, SR.No.17776

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MP(CO)
GN(01/02/2017)