



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.375 of 2017

[Orders Reserved on 13.06.2017]

Senthilkumar : Petitioner / Petitioner
Vs.

State, through
The Inspector of Police,
CBI / SPE / ACB, Chennai
in RC.MAI/A0015/2015
(Crime No.RC MA1 2015 A 0015
dated 21.04.2015)

: Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records relating to the case in Cr1.M.P.No.2103 of 2016, dated 01.02.2017 on the file of the Court of II Additional District Court for CBI Cases, Madurai and set aside the same and further direct the Respondent Police to hand over the properties / documents mentioned in the annexed Seizure list for interim custody of the petitioner.

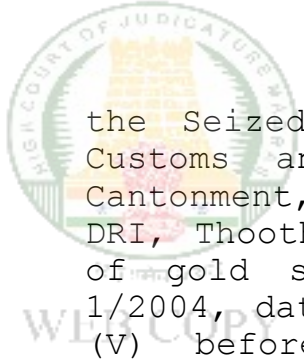
For Petitioner : Mr.M.Suri
For Respondent : Mr.S.Jeyakumar
Spl.Public Prosecutor for CBI Cases

O R D E R

This Criminal Revision Case has been filed praying to call for the records relating to the case in Cr1.M.P.No.2103 of 2016, dated 01.02.2017 on the file of the Court of II Additional District Court for CBI Cases, Madurai and set aside the same and further direct the Respondent Police to hand over the properties / documents mentioned in the annexed Seizure list for interim custody of the petitioner.

2. This matter is taken up for final disposal at the admission stage itself with the consent of the learned counsel appearing for the respective parties.

3. The petitioner herein is arrayed as A2 in RC.MAI/A0015/2015 / CBI / SPE / ACB, Chennai, for the offence under Sections 120(b) r/w. 420, 380, 409 IPC., and Sections 13(2) r/w 13 of Prevention of Corruption Act, 1988 pending on the file of the II Additional District Court for CBI Cases, Madurai. The allegation in the FIR against the petitioner and another is that



the Seized Goods Godown office situated in the Ground Floor of Customs and Central Excise building at No.1, Williams Road, Cantonment, Trichy-1, was opened on 18.04.2015 on the request of DRI, Thoothukudi as they were required to produce 18,512.500 grams of gold seized by them under OR.No.F No.DRI/CZU/TTN/48/14/INT-1/2004, dated 14.11.2014, which was deposited under WHR No.163/2014 (V) before the Court of Judicial Magistrate, Thiruvavarur on 18.04.2015 for pre-trial disposal proceedings. At around 10.30 Hrs., on 18.04.2015 the DRI Officers along with Intelligence Officers and A1, Superintendent, Incharge of Seized Goods Godown and A2 (Petitioner herein) Inspector, Seized Goods Godown opened the strong room and took out the package said to contain the seized gold of 18,512.500 grams. On visual inspection of package, the package appeared to have been tampered with and that the same did not have the requisite weight of 18,512.500 grams, as declared in the deposit memo. Thereafter, the said package was weighed and it was noticed that it weighed only 3580 grams inclusive of the packaging material.

4. During investigation it has come to notice that apart from the above instance loss, two more instances of loss / theft of gold to an extent of 21.310 grams approximately and foreign currency to the tune of Rs.17.52 Lakhs were also noticed and such instances are also investigated within the ambit of the present investigation.

5. Admittedly, the respondent Police searched the premises of the petitioner at Plot No.192 Raghavendra Highway Park, near Toll Plaza, Samayapuram, Trichy. 14 items including 4 Pen Drives and documents and one Godrej key were seized as listed in the search list, dated 23.04.2015 and searched another premises of the petitioner situated at Plot No.70, Sundaram Pillai Thottam, Arunachalam Nagar, Crawford, Trichy-12, and seized 8 items including one original passport of the petitioner, as listed in the search list, dated 23.04.2015. The respondent police has also seized mobile phone and mobile charger from the plot Suit No.B constructed guest house, Railway Station, Madurai, as listed in the search list dated 15.06.2015. The seized items were deposited in the Court of II Additional District Court (Special Judge for CBI Cases) Madurai and taken by the respondent Police for the purpose of investigation.

6. The petitioner / A2 filed Cr.M.P.No.2103 of 2016 before the II Additional District Court for CBI Cases, Madurai, under Section 457 Cr.P.C., seeking the respondent to return the properties shown in the search list dated 23.04.2015 and search list dated 15.06.2015 to the petitioner / A2. The said Court, after hearing both sides, dismissed the said petition on the ground that the petition is premature one, since the process of investigation is not yet over. Aggrieved by that order of dismissal, the petitioner /A2 filed the present Revision for the aforesaid relief.

7. The learned counsel appearing for the petitioner would submit that the seized documents / properties from the petitioner are in no way connected with the crime and those documents are not



incriminating documents at all. No convincing reason has been assigned by the learned Judge for dismissing the application seeking for interim custody of the properties / documents.

8. The learned Special Public Prosecutor appearing for the respondent would submit that the Mobile Phone of the petitioner seized on 15.06.2015 was sent to Forensic Analysis, to CFSL Hyderabad through the II Additional District Court (Special Judge for CBI Cases), Madurai and the expert opinion along with the Mobile Phone in a sealed condition are in the custody of the said Court and investigation of the case is in final stage and various evidence and circumstances / available against the accused / petitioner are being analyzed and the seized items from the residence of the petitioner / accused during search includes his passport bearing No.L 3680 737 and 4 Pen Drives containing the details of various gold seizures including the missing gold and considering the sensitivity of the case and the fact that the missing gold was entrusted safe custody to the petitioner / accused and there is every likelihood of the petitioner / accused leaving India to evade process of law and the respondent may be permitted to retain 4 Pen Drives out of the seized items, till the filing of the final report in this case, since the Pen Drives contain sensitive and relevant materials and the respondents may be permitted to deposit back the passport of the petitioner / accused with the II Additional District Court (Special Judge for CBI Cases), Madurai.

9. Perused the materials on record. Heard and considered the rival submissions made by either side.

10. Admittedly, the properties / documents mentioned in the search lists, dated 23.04.2015 and 15.06.2015 were seized from the house of the petitioner and also from the guest house, Railway Station, Madurai respectively on search conducted by the respondent Police. The seized items were deposited in the Court of II Additional District Court (Special Judge for CBI Cases), Madurai after seizure, taken back by the respondent for the purpose of investigation of the case registered against the petitioner and another accused. The seized item of Mobile Phone of the petitioner was sent to the Forensic Analysis to CFSL Hyderabad through the learned II Additional District Court (Special Judge for CBI Cases), Madurai. Expert Opinion along with Mobile Phone in sealed conditions are in the custody of the said Court. Investigation in this case is in final stage. The learned Special Public Prosecutor for the respondent would submit based on the counter statement of the respondent that he has no objection to return the documents / properties mentioned in the search lists, dated 23.04.2015 & 15.06.2015, except the seized items of 4 Pen Drives, since these Pen Drives contain sensitive and relevant materials and also the original passport of the petitioner bearing No. L 3680 737, since the missing gold was entrusted to the safe custody of the petitioner / accused and there is likelihood of the petitioner / accused leaving India to evade process of law. Final Report is not yet



filed in this case.

11. Considering the above facts and circumstances of the case and also the objections raised by the respondent Police, since the stage of the case, which is reported as in final stage and final report / charge sheet is not yet filed, this Court is inclined to allow the Revision in part by permitting the respondent only to retain the 4 seized Pen Drives and also the original Passport of the petitioner bearing No. L 3680 737.

12. In the result, this Criminal Revision stands **allowed in part** and the impugned order passed in CrI.M.P.No.2103 of 2016, dated 01.02.2017 by the learned II Additional District Judge for CBI Cases, Madurai is set aside. The Respondent Police is directed to hand over the properties / documents mentioned in the annexed Seizure lists for interim custody of the petitioner, except the 4 Pen Drives, Passport and the Mobile Phone, as described in the search lists, as interim custody, on proper undertaking by filing an affidavit by the petitioner to produce / return those items of documents and properties given as interim custody, as and when required, for investigation, if any.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1.The II Additional District Court for CBI Cases,
Madurai.

2.The Inspector of Police,
CBI / SPE / ACB, Chennai
in RC.MAI/A0015/2015
(Crime No.RC MA1 2015 A 0015
dated 21.04.2015)

3.The Special Public Prosecutor,
For C.B.I Cases, Madurai.

4.The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1cc to Mr.M.SURI Advocate in SR. No. 81630
MPK
JS/GT/SAR.1/3.11.2017/4P-6C

Pre-Delivery Orders made in

CrI.RC(MD)No.375 of 2017

Dated:- 05.10.2017