THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.357 of 2016

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the CrPC') is filed by the petitioners-3rd parties having been aggrieved of the order, dated 16.12.2015, of the learned III Additional Special Judge for CBI Cases, Hyderabad, passed in Crl.MP.No.143 of 2015 in CC.No.22 of 2013.

2. I have heard the submissions of Sri Challa Dhanamjaya, learned senior counsel appearing for the petitioners-3rd parties, and of Sri K. Surender, the learned Special Public Prosecutor for CBI Cases (TG) representing the 1st respondent-State. Respondents 2 & 3, who are accused 1 & 2 in the above Calendar Case, are stated to be not necessary parties. I have carefully perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, in brief, are as follows:

The respondents 2 & 3 are the accused 1 & 2 in case in Crime No.RC19(A)/2010-CBI/Hyd., which was registered for the offences punishable under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 ('the PC Act', for short) and Section 109 of IPC. According to the contents of the charge sheet and the case of the prosecution, a trap was laid against the 1st accused, Senior Divisional Engineer (West), South Central Railways, Secunderabad, and that in that trap he was caught red handed while accepting demanded bribe amount of Rs.10,000/- from the complainant/informant and that as a sequel to the said trap, the house of A1 was searched and a net cash of Rs.73,80,000/- besides incriminating material/documents pertaining to possession of assets acquired by him, which are disproportionate to his known sources of income, were seized and that a separate case in Crime No.18(A)-CBI-HYD/2010 was registered, on 02.07.2010, after receipt of the authorisation orders under Section 17 of the Act from the concerned authority against A1 under Section 13(2) read with 13(1)(e) of the Act for possession of assets/property disproportionate to his known sources of income for which A1 could not satisfactorily account for and that the charge sheet is also filed in the said crime and that the case in C.C.No.3 of 2011 on the file of the Court of the learned II Addl.Spl.Judge for CBI Cases, Gagan Vihar, Hyderabad, is under trial. Be that as it may.

3.1 In the present Calendar Case, the petitioners filed the afore-mentioned Miscellaneous Petition with the following submissions: - 'Petitioners 2 and 4 are the wives of the petitioners 1 and 3, who are the brothers of A1. A2 is the wife of A1. Petitioner no.5 is the brother-in-law of A2. He married A2's younger sister, that is, petitioner no.6. During Sankranthi festival of 2010, all the brothers of A1 and their wives, relatives and friends joined for the festival celebrations; they all mutually decided to start real estate business and construction activity at Hyderabad. The petitioners requested A2 to make efforts to secure a suitable land for the above purpose. A2 agreed for the same. Subsequently, during the 3rd week of March, 2010, A2 informed about the availability of the land to an extent of Ac.20.00 cents of One M.V.V. Satyanarayana at Kethepalli village. In the last week of March, 2010, the petitioners came to Hyderabad and contacted the said Satyanarayana, the land owner. He offered to sell Ac.20.00 cents of land and sent his representative to the village. He showed the lands, along with title deeds, to the petitioners. The petitioners were satisfied and decided to purchase the said land. The land owner expressed his intention to sell the said land @ Rs.6,00,000/- per acre whereas the petitioners offered to pay Rs.5,00,000/- per acre. The petitioners finally offered Rs.5.25 lakhs per acre, for which the land owner did not agree. The petitioners returned and requested A2 to persuade the landlord to fix the deal at Rs.5.25 lakhs per acre and intimate them so that they can pay advance as part payment and enter into an agreement to bind him. Thereafter, the landlord approached A2 and agreed to sell the land at the price offered by the petitioners. At the instance of the said Satyanarayana, A2 entered into an agreement, dated 10.04.2010, with the said person for selling Ac.20.00 cents @ Rs.5.25 lakhs per acre. Satyanarayana wanted an advance of Rs.2.00 lakhs with a default clause of forfeiture. A2 paid the same amount and signed the agreement and intimated the same to the petitioners. Thereafter, the petitioners concentrated on collection and pooling of the money of Rs.73,80,000/-. Petitioners placed the said amount in two duly locked suit cases. Then petitioners 1 & 3 went to Secunderabad, on 23.06.2010, along with the said suit cases to obtain a proper receipt for the amount paid and for the balance to be paid and to settle the deal for registration of the sale deed thereafter. Unfortunately, Satyanarayana was not available to hand over the amount. Their efforts to meet him failed, as the said Satyanarayana was said to be out of station and was expected to return after a week or so. Therefore, petitioners 1 & 3 returned and kept the two suit cases on the top of a Godrej Almyrah in the bedroom of the quarter of A1 & A2 and then returned to their village, on 24.06.2010. It appears that on the next day evening the CBI officials searched the house of A1 & A2 and broken open the two suits cases in a highhanded manner and took away the petitioners' cash of Rs.73,80,000/- inspite of the fact that A2 clearly represented that the money does not belong to her or A1 and that the money was brought by the petitioners for the purpose of purchase of land and that they (A1 and A2) have nothing to do with the said amount. The efforts of the petitioners to meet the CBI officials proved futile. Due to the seizure of the petitioners' money by the CBI officials, the aspirations of the petitioners, relatives and friends as well as of the innocent villagers who aspired to start the construction activity and real estate business are set at naught and the same caused irreparable loss to them. When the

Investigating Officer visited their village, the petitioners and the villagers repeatedly represented to him and gave statements about the facts concerning the amount of Rs.73,80,000/-. The petitioners were given to understand that during September, 2013, the said amount was deposited in FDR.No.840940 of SBH, Exhibition Branch, Hyderabad. Therefore, the petitioners approached the trial Court for return of the said amount. Unfortunately, the petitioners 1 & 3 received provisional attachment notice Order No.01/2015, dated 21.01.2015 from the Joint Director, Directorate of Enforcement, Hyderabad, Zonal Office stating that the petitioners' cash of Rs.73,80,000/- has been attached. Hence, the present petition is filed for return of the money.

3.2 The State filed a counter opposing the petition. In the counter it is *inter alia,* stated that the contentions of the petitioners in the petition are contrary to facts and that the amount seized in the residential premises of A1 is ill gotten money forming part of Disproportionate Assets of A1 and that the amount was already attached by the Enforcement Directorate *vide* order No.ECIR07/HZO/2012, dated 21.01.2015.

3.3 On merits and by the order impugned in the revision, the learned III Additional Special Judge dismissed the petition filed by the petitioners. A perusal of the order impugned would disclose that the learned Special Judge first noted that the contention of the prosecution is that the subject cash is ill-gotten money and forms part of the Disproportionate Assets of A1 and that the same is mentioned in the Statement B (assets acquired during the check period) and that to the contrary the contention of the petitioners is that the money belongs to them. The learned Special Judge also next noted that it appears that the money is provisionally attached by the Enforcement Directorate by an order, dated 21.01.2015, and that though the said order was stayed by this Court (High Court), no order was passed by this Court directing return of the money to the petitioner. Having so noted, the learned Special

Judge then observed in the impugned order that the issue involved requires to be adjudicated after full fledged trial in the main case and accordingly dismissed the petition of the petitioners. Therefore, the petitioners are before this Court.

4. Learned senior counsel, while reiterating the case of the petitioners, which is already stated supra, would contend as follows: -

During the course of investigation itself, a claim was made that the money belongs to the present petitioners. A1 also categorically stated that the amount seized from the house belongs to the petitioners herein and that the said money does not belong to him or A2. The 1st respondent also did not raise any serious objection for release of the property/money to the petitioners. The 1st respondent only raised a question that the money is provisionally attached by the Enforcement Directorate by an order, dated 21.01.2015. However, the said objection is not a tenable objection as the same was seized by the 1st respondent during the course of investigation and was produced before the trial Court, which is the competent Court, having powers to grant interim custody of the property/money. The learned Special Judge ought to have seen that pursuant to the agreement, dated 10.04.2010, A2 paid a sum of Rs.2,00,000/- on behalf of the petitioners, and that the said fact is reflected in the charge sheet filed by the 1st respondent at item no.62 in Statement 'D', and that itself is sufficient to come to a conclusion that the transaction as being claimed by the petitioners is a genuine one. The learned Special Judge ought to have seen that the agreement of sale, dated 10.04.2010, is also marked as D-58 in the list of documents (Annexure-III) of the charge sheet filed by the 1st respondent, which is also in conformity with the stand taken by the petitioners. Further, the provisional attachment made by the Enforcement Directorate was suspended by this Court in W.P.No.14683 of 2015 and as such there is no attachment against the property as on the date the order impugned was passed by the learned Special Judge. The learned Special Judge was in error in observing that the petition is liable for dismissal as there was no direction by this Court in the writ proceedings to return the property. The investigation record shows that the money was seized from the house of the accused, but, at the earliest point of time both the respondents 2 & 3, who are accused 1 & 2, stated that the money does not belong to them and that it belongs to the petitioners and that the petitioners also made a claim to the said money during the course of their examination by the investigating agency. However, the learned Special Judge failed to consider all the said aspects in proper perspective. The petitioners are prepared to give a bank guarantee for the entire money from a nationalised bank and abide by any conditions that may be imposed by this Court in the event of release of the money to them as prayed for.

5. Learned Special Public Prosecutor while supporting the orders of the Court below submitted as follows:

The money was admittedly seized from the house of the accused 1 & 2. According to the version of the prosecution and according to the investigation done in the matter, the subject money is part of Disproportionate Assets of A1 as the same is acquired during the check period. It is accordingly mentioned in Statement 'D'. As rightly held by the learned Special Judge, the issue as to whether the money belongs to the accused or the petitioners cannot be prejudged. If any order releasing the money for interim custody to the petitioners is passed, it would cause prejudice to the rights and contentions of the prosecution as the prosecution is specifically contending that the money is that of the accused 1 & 2 and is part of Disproportionate Assets but not that of the petitioners. Though the attachment order was suspended by this Court in the writ petition, the matter is *sub judice* in the writ petition and as rightly observed by the learned Special Judge, there is no direction for return of the money to the petitioners. The whole theory of the petitioners including the theory that the suit cases with the money were kept in the house of A1 & A2 a day before the raid & seizure of the same, is far fetched and the said theory reflects that it is unbelievable and is invented to some how lend support to A1 & A2, who are closely related to the petitioners. The agreement does not disclose that the petitioners are concerned with the deal related to the purchase of property covered by the agreement and that the agreement does not show that it was entered into by A2 for and on behalf of all the purchasers including the petitioners and that therefore the very document does not support the case of the petitioners. Hence, the revision is devoid of merit and is liable to be dismissed.

5.1 He placed reliance on a decision in State of Karnataka v. K. Krishna Gowda and another[1] wherein the facts are as follows: -'A case was registered under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 with a specific allegation that the accused amassed wealth disproportionate to his known source of income and that such assets include cash and other valuables, which were seized. The learned Sessions Judge passed orders releasing cash of Rs.70,000/- seized from the possession of the accused on his executing a bond for Rs.75,000/-.' In the revision questioning the said order, the High Court of Karnataka, observed that the Court should bear in mind the nature of offence that is alleged against the accused; the properties that are recovered from the custody of the accused and examine as to whether it was feasible to release the properties or not; and, that when the case is registered for the offence punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988, with a specific allegation that the accused in the course of his employment in various capacities has amassed the wealth disproportionate to his known source of income neither Section 451 of CrPC nor Section 457 of CrPC could have been

[1] 2005 CrlLJ 259

made applicable to the facts of the case and held that the order of the learned Sessions Judge releasing the cash is untenable.

6. I have given detailed and thoughtful consideration to the facts and submissions, which are adverted to supra in detail.

7. No-doubt, the Special Court is having power to give interim custody and return the property involved in a crime to the eligible applicant/s provided the facts and circumstances warrant granting of such relief. In the case on hand, during the course of investigation, the subject cash of Rs.73,80,000/- was seized from the house of A1 & A2. The amount is a substantial amount. The petitioners, who are closely related to A1 & A2, contend that during Sankranthi festival of 2010, all the brothers of A1 and their wives, relatives and friends joined for festival celebrations and that they all mutually decided to start real estate business and construction activity at Hyderabad and that in that connection a deal was entered into with one Satyanarayana at the instance of A2 who had identified the land and also the vendor and that later the vendor requested A2 to pay the advance amount of Rs.2.00 lakhs and enter into an agreement for the agreed consideration and that when the said landlord approached A2 on 10.04.2010 she entered into the agreement by paying Rs.2.00 lakhs and signing the agreement and that the same was later intimated to the petitioners and that on that the petitioners pooled the money and kept the same in two duly locked suit cases and that thereafter the petitioners 1 & 3 brought the same to finalise the deal with the said Satyanarayana and that as he was unfortunately not available, they returned and kept the two suit cases on the top of an almyrah in the house of A1 & A2 and returned to their village on 24.06.2010 and that during the course of search by the CBI officers on the next day, the said suitcases were broken open and the said amount of cash was seized therefrom though it was the money pooled up and brought by petitioners for purchase of land and A1 & A2 have nothing to do with the same. Their

further version is that even during the course of investigation certain facts came to light and that the said facts like the agreement of sale, dated 10.04.2010, and the allegation that A2 paid an amount of Rs.2.00 lakhs as advance for purchase of Ac.20.00 cents of land at Kethpalli village, Nakerka Mandal, and the relevant document filed with the charge sheet support the version of the petitioners and the genuineness of their claim and that during the course of investigation and at the earliest point of time the above facts and the further fact that the money does not belong to the accused and that it belongs to the petitioners was disclosed and that despite such claim, the money was seized and the seizure was reported to the Court and that in the circumstances, the Special Court ought to have released the money in their favour and that as the money was held up the petitioners could not proceed with the deal of purchase of land and that they are being put to irreparable loss. Per contra, the case of the CBI is that the said money recovered from the suit cases kept in the house of A1 & A2 is part of the ill gotten money and disproportionate assets acquired by A1 and that it is accordingly mentioned in Statement B-Assets Statement as the same is acquired during the check period, according to the investigation done in the matter. As already noted in the submissions of the learned Special Public Prosecutor, the case of the prosecution is that the very theory is far fetched and that the recitals in the agreement do not support the case of the petitioners. Thus, there are two rival versions. A full-fledged trial of the case is necessary to come to the conclusion as to which one of the two versions is correct. The said issue cannot be pre-judged, in the considered view of this Court. Further, the money was attached by Enforcement Directorate; and, in a writ petition, suspension orders were granted. However, no further orders are granted for release of the money to any eligible claimant. That matter is *sub-judice*. Further, the Accused Officer is facing trial for the offences under P.C. Act on the imputations and allegations that he amassed wealth of more than rupees three crores during the check period, which is in excess of his known sources of income to a tune of rupees seventy lakhs and odd. Therefore, this Court finds that unless there is ample material to come to a safe conclusion on the issue, after full-fledged trial, it is not just and fair to release the amount to the petitioners/3rd parties.

8. On the above analysis, this Court finds that the order impugned is justified and warrants no interference, in the facts and circumstances of the case.

9. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

11.08.2017
Note: Issue CC by 31.08.2017
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