THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No. 1107 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') is filed by the petitioner/A1, who is aggrieved of the judgment, dated 04.11.2016, in Criminal Appeal No.47 of 2016 on the file of the Court of the learned VII Additional Sessions Judge, Ongole, Prakasam District, insofar as confirmation of the judgment, dated 29.10.2015, of the learned Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Ongole, in C.C.No.15 of 2015 to the extent of confiscation of cash of Rs.13,96,500/-.

2. I have heard the submissions of *Sri K.S.Murthy,* learned counsel appearing for the petitioner/accused, and of the learned Public Prosecutor appearing for the respondent/State of AP. I have perused the material record.

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

PW4, the Inspector of Police, Ongole Taluq Police Station, along with his staff visited Telugu Desham Party Office at Old Guntur Road, Ongole, at 7 PM, on 02.06.2012, and found that A1 was distributing cash to the voters on the instructions of A2-Damacherla Janardhan, in violation of the provisions of Representation of Peoples Act, to influence the voters to cast their votes in favour of A2 in the forthcoming bye-elections to the Ongole Assembly Constituency. He was of the opinion that A1 and A2 disobeyed the orders promulgated by the Election Commission. He, therefore, arrested A1 in the presence of witnesses; and, recovered cash in a sum of Rs.13,96,500/- besides two account papers under a Mediator's report attested by the witnesses and obtained orders of remand by producing A1 before the Court of the learned

Magistrate. He registered the case in Crime No.248 of 2012 for the offences punishable under Sections 188 and 171(E) IPC and Section 123 of the Representation of Peoples Act, 1951, and conducted further investigation. On surrender of A2, on 10.09.2013, he was released on bail. After conclusion of investigation, he filed a charge sheet against A1 and A2. After full-fledged trial, the trial Court found the accused not guilty of the offences with which they are charged and acquitted them, as all the prosecution witnesses turned hostile and did not support the case of the prosecution. However, the trial Court ordered for confiscation of MO1, cash in a sum of Rs.13,96,500/-. As already noted, the learned VII Additional Sessions Judge, Prakasham, at Ongole, dismissed the Criminal Appeal No.47 of 2016 preferred by the petitioner/A1 and confirmed the orders of confiscation passed by the trial Court.

4. Learned counsel for the petitioner/accused would submit as follows:

When the prosecution witnesses turned hostile and the case against the petitioners/accused 1 and 2 ended in honourable acquittal, the trial Court ought not to have confiscated the cash allegedly seized under the mediator's report, more particularly, when the mediators also turned hostile and when there is no material to hold that the cash involved was seized as alleged and that it related to the alleged crime. The cash seized is not meant for distribution to voters. The said amount was an advance amount received by A1 from Gorantla Venkata Rao of Kunamanenivaripalem Village in connection with the sale transaction of the house site. The Courts below confiscated the said personal cash of the petitioner by wrongly casting an apprehension on the petitioner/A1 even in the absence of any evidence or material brought on record that the cash was seized and that it related to the alleged offence. The Courts below failed to consider the evidence of PWs 1 and 2 to the effect that their signatures were obtained on white blank papers in the Police Station and that they do not know anything about the case. The learned Judges of the Courts below failed to consider the cross-examination of PW4, wherein, he specifically stated that he did not make an enquiry with regard to the maintenance of account papers found in possession of A1 and that he did not file the said account papers allegedly seized by him from A1 into Court and that he did not investigate about the source of availability of MO1-money with A1. Hence, the confiscation of cash as ordered by the Courts below is erroneous and the said confiscation orders are liable to be set aside.

5. Learned Public Prosecutor supported the orders of the Courts below *inter alia* contending that the orders impugned are justified under facts and in law.

6. Learned counsel for the petitioner would also bring to the notice of the Court the fact that the petitioner/A1 filed Crl.M.P.No.1832 of 22014 in Crime No.248 of 2012 of Ongole Taluk Police Station, under Section 457 of the Code to permit him to receive the amount of Rs.13,96,500/-, which was seized from him on 02.06.2012 and that the said petition was allowed by an order, dated 22nd September, 2014 of the learned Magistrate passed in the above said petition and that interim custody of the said cash was given to the petitioner on his furnishing bank guarantee for a sum of Rs.14 lakhs to the satisfaction of the learned Magistrate. He would further submit as follows: "In the said petition also, the petitioner stated to the following effect: 'On 02.06.2012, the wife of the petitioner by name Marripudi Sirisha sold away her house site to an extent of 38 gadies for a sum of Rs.30,00,000/-. Out of the total consideration, he received a sum of Rs.15 lakhs towards advance from one Gorantla Venkata Rao. After receiving the said amount, the petitioner gave Rs.1,00,000/- to one Srinivasa Rao to whom the petitioner was indebted. The petitioner was going to Tangutur on his car. On the way, when the reached near Addanki bus stand, police people suddenly stopped the car and found the

amount in the car and took away the said amount.' Thus, at the earliest opportunity, the petitioner made a claim in respect of the cash by stating that all the circumstances. In deed he was also given interim custody of the said amount on furnishing a bank guarantee. In the facts and circumstances of the case, the trial Court was in error in passing the order of confiscation of MO1, cash, though it acquitted the accused/A1 and A2 by the judgment rendered by it in the case. The appellate Court committed a grave error in confirming the said orders of the trial Court."

7. I have given detailed and thoughtful consideration to the facts and submissions.

8. Admittedly, none of the witnesses supported the case of the prosecution; and, on the witnesses turning hostile, the learned Magistrate found the accused not guilty of the offences with which they were charged and acquitted them. Further, seizure of the cash in the circumstances stated in the mediator's report is not proved, as both the mediators stated before the trial Court that their signatures were obtained in the police station on white blank papers and that they do not know anything about the contents of the mediators' report, exhibit P3. When there is no evidence to prove that the cash was seized in the circumstances stated in the mediators' report and when the case ended in acquittal of the accused 1 and 2, it is obvious that there is no material to come to a safe conclusion that the cash involved and allegedly seized related to the alleged offence with which the accused 1 and 2 are charged. Further, as rightly contended by the learned counsel, the Investigating Officer did not conduct any investigation regarding the maintenance of the account papers, which are in alleged possession of A1 at the time of the alleged seizure. Further, he did not file into Court, the said account papers, allegedly seized by him. He further admitted that he also did not investigate about the source of availability of MO1, cash of Rs.13,96,500/-

with A1. All the facts cumulatively point out that there is no material whatsoever to conclude that the cash allegedly seized under the alleged mediators' report related to the crime. Absolutely there is no material at all to find that the cash was used in committing the alleged offences or that the cash is the property regarding which the offence is committed.

9. On the above analysis, this Court finds that the trial Court is not justified in passing the order of confiscation of MO1, cash, in the judgment passed in C.C.No.15 of 2015, whereby A1 and A2 were acquitted and that the Court below is equally not justified in confirming the said order of confiscation of MO1, cash of Rs.13,96,500/-. For all the above stated reasons, this Court holds that there is acceptable merit in the revision case and that the revision case deserves to be allowed.

10. In the result, the Criminal Revision Case is allowed. As a sequel, the confiscation order in the judgment dated 04.11.2016, passed in Criminal Appeal No.47 of 2016, of the learned VII Additional Sessions Judge, Ongole, Prakasam District, whereby the order in the judgment, dated 29.10.2015, of the learned Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Ongole, in C.C.No.15 of 2015, to the extent of confiscation of MO1-cash in a sum of Rs.13,96,500/- is hereby set aside. As a sequel, the trial Court is now directed to take steps in accordance with procedure established by law for return of MO1, cash of Rs.13,96,500/- and accordingly return the same, with interest accrued thereon, if any, to the petitioner/A1 on his making an appropriate application as required under facts and in law.

Pending miscellaneous petitions, if any, in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

13.07.2017
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