

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE Nos.1605 and 1609 of 2017

COMMON ORDER:

Aggrieved by the orders dated 06.12.2016 passed in CrI.M.P.Nos.721 and 723 of 2016 in Cr.No.28/ACB-CIU-HYD/2011 by the I Additional Special Judge for S.P.E. & A.C.B. cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad, wherein the trial Court declined to order return of the original documents, these revisions are filed.

The petitioners in both the revisions are 3rd parties and filed an application under Section 451 read with 457 of Cr.P.C. alleging that a case was registered against the respondent No.2/A.O. while he was working as O.S.D, Vikarabad, Ranga Reddy District vide crime No.28/ACB-CIU/HYD of 2011 for the offence punishable under Section 13 (i) (e) read with 13 (2) of P.C.Act and during investigation of the said case, the investigating officer collected some original documents from the petitioners and after completion of the investigation, investigating agency addressed a letter for sanction by the Government.

It is contended that those documents are no way concerned with the offence allegedly committed by the respondent No.2. Petitioner in CrI.R.C.No.1609 of 2017 worked as M.D.O. Petitioner in CrI.R.C.No.1605 of 2017 hails from Manigilla Village, Pedamandadi Mandal, Mahaboobnagar District. She is also a landlord, blessed with two sons and a

daughter. Her elder son is a Software Engineer working in U.S.A. and her younger son and wife are also working as Software Engineers in U.S.A. and citizens of U.S.A.

The petitioners intend to keep those documents with them to protect the properties from land grabbers and encroachers. Hence, they prayed to return those documents.

The respondent filed counter *inter alia* contending that the case is at the stage of investigation and the investigating agency is waiting for sanction orders from the competent authority. Therefore, at this stage the documents cannot be returned.

The I Additional Special Judge for S.P.E. & A.C.B. Cases – cum – V Additional Chief Judge, City Civil Court, Hyderabad held that the documents are under the safe custody of the Court that too the property was attached by the Court. Therefore, the need of the petitioners cannot be accepted for return of the documents and dismissed the petitions.

Aggrieved by the same, the present revisions are filed on various grounds mainly reiterating the requirement of the documents and contended that the properties of the petitioners were not purchased by the ill-gotten wealth of respondent No.2 and that the attachment was not subsisting as on the date of order of trial Court, but the trial Court made such observation without any basis and committed an error, thereby requested to allow the revisions setting aside the

orders passed in Crl.M.P.Nos.721 and 723 of 2016 in Cr.No.28/ACB-CIU-HYD/2011.

During hearing, learned counsel for the petitioners while reiterating the contentions raised in the revisions specifically contended that entire investigation is completed and the properties covered by the documents are sought to be deleted, for such purpose a letter was addressed to the Government and requested this Court to call for the entire record from the concerned authorities to find out whether the properties covered under the subject documents are sought to be deleted by the investigating agency or whether the prosecuting agency addressed a letter for deletion of those properties from the list of assets of respondent No.2. Apart from that there was no subsisting attachment order on the date of order of the trial Court, hence the observation of the trial Court that the property was attached by the Court is not based on any material and prayed to set aside the orders passed by the trial Court.

Learned Special Standing Counsel for A.C.B. supported the order while placing reliance on the order of this Court dated 05.01.2017 passed in Crl.P.No.15912 of 2016 and prayed to dismiss the revisions.

The powers of this Court under Section 397 and 401 of Cr.P.C. are limited and this Court normally cannot interfere with the fact finding of the trial Court and can exercise such power only in exceptional circumstances where the findings of

the Court below are manifestly perverse or apparently erroneous. Therefore, unless the petitioners satisfy the Court that the order of the trial Court is manifestly perverse or apparently erroneous, this Court cannot interfere with the order passed by the Court below while exercising power under Section 397 and 401 of Cr.P.C.

Here, the petitioners filed present petitions under Section 451 read with 457 of Cr.P.C.

Section 451 of Cr.P.C. deals with order for custody and disposal of property pending trial in certain cases. Section 457 of Cr.P.C. deals with procedure by police upon seizure of property, which reads as follows:

457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

Here, in this case the property was produced before the Court, thereby the applicability of Section 457 of Cr.P.C. is doubtful. However, quoting wrong provision is not a ground to deny the relief, but the purpose for which the petitioners

required documents is only to protect the properties from land grabbers and encroachers.

Learned counsel for the petitioners contended that for the purpose of investigation or trial, certified copies of the documents are sufficient; in such case the retention of the documents would not serve any purpose and requested to return them.

But this contention is not acceptable for the reason that if the documents are returned, there is every possibility of creating charge or mortgage over the subject properties by depositing title deeds or using those documents, petitioners may deal with the properties and to protect the properties from land grabbers and encroachers, the petitioners themselves can use the certified copies. Therefore, the requirement of original documents to protect the properties from land grabbers and encroachers is not a ground to return the documents, hence on this ground the documents cannot be returned.

The other contention raised by the learned counsel for the petitioners is that the prosecuting agency deleted those properties from the list of disproportionate assets of respondent No.2 and it is not known whether the prosecuting agency addressed any letter to the Government to that effect, and the learned counsel for the petitioners requested this Court to call for the entire record. But such power is not conferred on the Court under Section 397 and 401 of Cr.P.C.

and this Court cannot call for the administrative record from the Government while exercising power under Section 397 and 401 of Cr.P.C.

If really any such letter was addressed to the Government by prosecuting agency, it is for the learned counsel of the petitioners to produce such letter to avail benefit of such letter for getting return of the documents. Therefore, this Court cannot call for record from the authorities concerned in a revision, but at best this Court can call for the record from the trial Court or Government in a writ petition. Hence, I am unable to accede to the request to call for entire record from the Government in respect of the above crime to interfere with the orders passed by the trial Court.

Notwithstanding the observation of the trial Court that there was attachment of the property, in terms of criminal law amendment Act the requirement of the petitioners is not an acceptable ground and on such ground the documents cannot be ordered to be returned. Hence, I find no grounds to interfere with the findings recorded by the trial Court to decline order return of documents. Consequently, the revisions are liable to be dismissed.

In the result, the revisions are dismissed. However, the petitioners are at liberty to renew their request after securing letter, which the prosecuting agency allegedly addressed to the Government for deletion of items covered by the

documents, which are sought to be returned by filing the present revisions.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.08.2017
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