THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No.1014 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') by the petitioner/A1 is directed against the docket order, dated 16.02.2017 of the learned Judicial Magistrate of First Class, at Korutla, Karimnagar District, passed in Crl. M.P. No. 351 of 2016 (in Crime no. 262 of 2016 of P.S. Korutla).

2. I have heard the submissions of *Sri C.Hari Preeth*, learned counsel for the petitioner/A1, and of the learned Public Prosecutor representing the respondent-State of Telangana. I have 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 petitioner is the 1st accused in a case in Crime No.262 of 2016 on the file of the Korutla Police Station, which was registered for the offences punishable under Sections 420, 406 read with 34 IPC. According to the contents of the First Information Report and the remand case diary, on receipt of reliable information, the police officer concerned, apprehended, at about 11.15 hours, on 29.11.2016, three persons sitting in white colour Mahindra Xylo vehicle bearing registration No.AP 25 AQ 0992, parked towards Jagtial near Limra Dhaba on National Highway 63, and found huge amount of currency on search of the said vehicle in possession of the said three persons and seized the vehicle as well as the cash in possession of the said three persons, vide panchanama/Mediator's report drafted during the course of investigation. According to the further case of the prosecution, A1 to A3 decided to exchange new currency for old currency by taking huge commission from innocent people and A2 and A3 together brought an amount of Rs.6,85,000/- in rupees 2000/-, 1000/- and 20/- denominations and exchanged the same with old currency, which is available with A1 and received from him an amount of Rs.7,53,500/-;

and, thereby, gained 10% commission in the process of exchange and in turn, A1 gained new currency worth Rs.6,85,000/- in lieu of old currency of Rs.7,53,500/-.

3.1 Be that as it may. The petitioner/A1 filed the above said miscellaneous petition before the Court of the learned Judicial First Class Magistrate, Korutla, under Section 451 of the Code seeking return of the case property by stating the details of the property as follows:

"DETAILS OF CASE PROPERTY:

Net Cash Rs.25,34,000/- (Rupees Twenty Five Lakhs and Thirty Four Thousands only)

1000 * 1416 = 14,16,000/-
500 * 2091 = 10,45,500/-
2000 * 26 = 52,000/-
100 * 205 = 20,500/-

Total:- 25,34,000/-

In his said petition, the petitioner stated that the property may be released and may be given interim custody to him by allowing him to furnish sureties and has further undertaken to produce the property as and when ordered by the Court.

3.2 The said petition was resisted by the prosecution.

3.3 On merits and by the orders impugned in the revision, the learned Magistrate dismissed the petition filed by the petitioner/A1. Therefore, the petitioner/A1 is before this Court.

4. Learned counsel for the petitioner/A1 while reiterating the chronology of events, which led to the filing of the present criminal revision case, would further submit as follows:

A false case is foisted against the petitioner/A1. The petitioner/A1 is a Trade Licence Holder and possessed franchisee certificate and is authorized by a certificate issued by the Reserve Bank of India to deal with Foreign Exchange management. The petitioner/A1 is also an agent for Western Union Holdings Inc., and is also associated with Instant Global Money Transfer Private Limited as Agent-Partner. He is also a Service Provider in UAE X change. Therefore, the petitioner/A1, during the course of his trade/business will be having possession of monies of different customers and would be catering to the needs of his customers. Though it was first alleged that A2 and A3 together brought an amount of Rs.6,85,000/- in rupees 2000/-, 1000/- and 20/- denominations and exchanged the same with old currency, which is available with A1 and received from him an amount of Rs.7,53,500/-, his entire money pertaining to his business transactions was seized by falsely implicating him in a criminal case. The petitioner is the owner of the seized cash. Admittedly, the property/cash was seized from the petitioner/A1 and it was converted into a Fixed Deposit with the permission of the Court. The petitioner is a licencee and a certificate holder and he was doing his business as per law. The petitioner requires the seized money to proceed with his business transactions. He is answerable to his customers. The observation of the trial Court that if the money is returned, there is a chance of the petitioner spending away the money is untenable. Further, the petitioner has clearly stated that he is prepared to produce the sureties to the satisfaction of the learned Magistrate and has also undertaken to produce the property as and when directed. The learned Magistrate is empowered to return, for interim custody, the case property viz., cash, which was later invested in a Fixed Deposit. Even the properties, i.e., cash, which are not subjected to speedy and natural decay, can also be returned. If cash is kept in a Fixed Deposit, it will earn a bare minimal interest. However, if it is returned, the petitioner can complete the transactions with his customers. If the property is kept in a Fixed Deposit and is returned with bare minimal interest to the petitioner, he would suffer serious loss in the event of his eventual acquittal in the present case. The case was registered for statistical purposes, though the petitioner is a Trade Licence Holder and holds a certificate and is authroised to do trade and conduct business related to money transactions and foreign exchange currency. The order of the trial Court refusing to give interim custody of the money to the petitioner/A1 resulted in failure of justice. The said order caused serious and irreparable loss to the petitioner. Hence, the revision may be allowed and the order impugned may be set aside and the learned Magistrate may be directed to release the case property, namely, money in a sum of Rs.25,34,000/- kept in the form of Fixed Deposit (with interest) after duly encashing the same. The petitioner is prepared to produce sureties to the satisfaction of the learned Magistrate and undertakes to produce the money as and when directed and also abide by any conditions, which the Court may impose.

5. Learned Public Prosecutor supported the impugned order passed by the learned Magistrate. It is submitted that the afore-stated case property is invested in a term deposit with State Bank of Hyderabad, Korutla Branch, in favour of the Court of the Junior Civil Judge, Korutla.

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

7. Having regard to the facts and without expressing any views on the merits of the matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of part of the Cash can be given to the petitioner/A1 after imposing necessary conditions. Instead of allowing the entire money to lie in a fixed deposit, it is apposite to give interim custody of a part of the cash to the petitioner/A1 as such a course meets the ends of justice and also inures for the benefit of the ultimate successful party. There are no compelling reasons, in the case on hand, to not to pass an order giving interim custody of part of the cash to the petitioner/A1.

8. Accordingly, the Criminal Revision Case is allowed and the impugned order is set aside and the learned Judicial First Class Magistrate, Korutla, Karimnagar District, is directed to encash the term deposit and retain an

amount of Rs.6,85,000/- with the Court by re-investing the same in a fixed deposit as per procedure and, nevertheless, grant interim custody of the balance amount to the petitioner/A1 on the petitioner/A1 executing a personal bond for a sum of Rs.25,00,000/- (Rupees twenty five lakhs only) and producing two solvent sureties, who are in Government service, for a like sum each to his satisfaction and on the petitioner/A1 further undertaking to produce the released amount of money as and when directed by the Court and to co-operate with the investigating agency during the course of investigation.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M. Seetharama Murti, J

13th June, 2017
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