THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.352 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 petitioner-3rd party 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.142 of 2015 in CC.No.22 of 2013.

2. I have heard the submissions of Sri Challa Dhanamjaya, learned senior counsel appearing for the petitioner-3rd party, and of Sri K. Surender, 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 PC 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 petitioner filed the afore-mentioned Miscellaneous Petition with the following submissions: -

She is a 3rd party. The CBI officials un-necessarily seized the petitioner's cash of Rs.5,00,000/- kept in the locker bearing no.3/17, State Bank of India, Tadepalligudem Branch, inspite of the information given by A2, who is her sister-in-law, that the said amount belongs to the petitioner and that the petitioner and her husband were not holding any locker in their names. Satya Venkata Palayya, who is the husband of this petitioner, is a businessman and an agriculturist. He owns Ac.5.00 cents of fertile land and a rice mill. He is a wealthy person. He hails from a respectful family. He expired suddenly, on 07.08.2008, having suffered a heart attack. The petitioner is having two daughters and a son. Son is a student. The marriages of the daughters are performed. The petitioner has to attend a marriage function. The petitioner decided to attend the marriage function by locking her house. Rs.5,00,000/- was available in the house; and, the same was kept for affecting improvements and repairs to her old house. She thought of keeping the same securely in the locker of A2 as she was not holding a locker in her name. After reaching Tadepalligudem, on 15.06.2009, the petitioner met A2 and requested her to keep her said amount securely in the bank locker of A2. A2 agreed for the same. The petitioner stayed with A2, who is her sister-in-law, at her parents' house at Tadepalligudem. On the next day, that is, 16.06.2009, A2 took the petitioner to SBI Branch, Tadepalligudem, and opened the locker and kept the said sum of Rs.5,00,000/- contained in a cover in the locker and locked it in the presence of the petitioner. After the formalities of the wedding were over, the petitioner returned to her house at Ponguturu. Her family members, relatives and friends, who attended the marriage, are aware of the fact that the petitioner entrusted her cash to A2 and that A2 kept it in the locker belonging to A2. Due to serious health problems in the family, the petitioner could not get her house repaired/improved and the amount of Rs.5,00,000/- remained in the locker of A2. Later in the 3rd week of July, 2010, the petitioner came to know that the CBI officials came and searched the locker of A2 and seized the petitioner's cash also inspite of A2 repeatedly representing that the cash belongs to the petitioner and that it was kept in her locker for safe custody. After the search, the official of CBI summoned the petitioner and asked her about the money kept in the locker and the petitioner claimed only Rs.5,00,000/- lying in the locker. The petitioner made no claims in respect of the jewellery kept in the locker. However, without heeding the representation of the petitioner, the CBI officials took away the cash of Rs.5,00,000/-. The petitioner's brother and sister-in-law also informed the facts to the officers of the CBI. Then they told the petitioner that after verification they would certainly return the money to her. Having no other go, the petitioner waited for some time. Due to un-necessary seizure of the petitioner's money, her house repair work was held up. She kept quiet as she has no male assistance. During the last week of December, 2012, one CBI official came and disclosed his name as Vijaya Bhaskar and told her that he came to enquire about the cash seized from the locker. The petitioner narrated all the facts to him. However, while leaving her house, the Inspector prepared a notice addressed to her son requiring him to appear before him at CBI office at Hyderabad, and handed over the said notice to her son. However, due to examination schedules, her son addressed a letter to the said officer to fix some other date. Later nothing was heard from the said Officer. Her efforts through friends and relatives at Hyderabad to secure her money were in vain. She was informed that the money is now in the custody of the Court and it will be released after the Court's decision. 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 petitioner in the petition are contrary to facts and that the amount seized from the locker of A2 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 petitioner. 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 petitioner is that the money belongs to her. 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 petitioner. Therefore, the petitioner is before this Court.

4. Learned senior counsel, while reiterating the case of the petitioner, 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 petitioner. A2 also categorically stated that the amount seized from her locker does not belong to her and that it belongs to the petitioner herein. The petitioner, during the course of her examination by the investigating agency, in all fairness, claimed only the money, which actually belonged to her; but, she did not make any claims to the jewellery and other items present in the locker. The said fact discloses her *bona fides* and that of her claim. The 1st respondent also did not raise any serious objection for release of the property to the petitioner. 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 produced before the trial Court, which is the competent Court, having powers to grant interim custody of the property. 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 by 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 order by this Court in the said writ proceedings directing to return the property. The investigation record shows that the money was seized from the locker held by A2 and that at the earliest point of time both the respondents 2 & 3, who are accused 1 & 2, also stated that the money does not belong to them and that it belongs to the petitioner and that the petitioner also made a claim to the said money during the course of her examination by the investigating agency. The learned Special Judge failed to consider all the said aspects in proper perspective. The money of the petitioner is required for repairs and improvement of her house. It is not uncommon for ladies to keep their moneys, valuables and jewellery with close relatives for safe custody. The petitioner is 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 her 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 locker held by A2. 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 B-Assets Statement. As rightly held by the learned Special Judge, the issue as to whether the money belongs to the accused or the petitioner cannot be prejudged. If any order releasing the money for interim custody to the petitioner 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 petitioner. 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 petitioner. The theory of the petitioner with regard to keeping her money in the locker held by A2 and her further explanation for not taking back the money from the locker of A2 immediately thereafter, that is, after the formalities of the wedding are over, are both far fetched and the said explanations on their very face are unbelievable and make it manifest that the claim is made to some how lend support to A1 & A2. Hence, the revision is devoid of merit and is liable to be dismissed.

5.1 He placed reliance on the 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 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 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.5.00 lakhs was seized from the locker of a bank held by A2. The amount is a substantial amount. The petitioner contends that her husband died and that in her house Rs.5.00

[1] 2005 CrlLJ 259

lakhs was kept for improvements and repairs of her old house and that while locking and leaving her house to attend a marriage function, as she was not holding a locker in her name, she thought of keeping the same securely in the locker of A2 and that, on 15.06.2009, the petitioner met A2 and requested her to keep her said amount securely in the bank locker of A2 and that A2 agreed to keep her said money in the locker held by her (A2) and that her money was accordingly kept in the locker held by A2 for safety and that after the wedding formalities are over she returned to her village and that due to serious health problems in the family, the petitioner could not get her house repaired/improved and that the amount of Rs.5,00,000/- remained in the locker held by A2 and that during the course of investigation, the said money was seized by the investigating agency and that at the earliest point of time A2 disclosed that the money does not belong to her and that it belongs to the petitioner and that the petitioner also stated in during her examination by the investigating officers that the money belong to her and not to A2 and that despite such claims, 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 her favour and that as the money was held up she is not in a position to improve and repair her house. Per contra, the case of the CBI is that the said money recovered from the locker of A2, who is no other than the wife of A1 (AO), 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. 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 the provisions of the 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 petitioner/3rd party.

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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