

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL R.C.NO.2017 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. challenging the judgment, dated 17.06.2017 in Crl.A.No.183 of 2016 passed by the Principal Sessions Judge, Kadapa confirming the order dt.24.06.2016 in Crl.M.P.No.1358 of 2016 in Crime No.222 of 2015 passed by the II Additional Judicial Magistrate of First Class, Kadapa negating the order to return the property seized from the possession of the petitioner under cover of panchanama.

2. The de facto complainant by name Dunnuthala Vijaya Kumar who is running water plant business lodged complaint with the police stating that the accused is said to have lured to take money from him at the rate of Re.1/- interest per hundred per month and thereafter asked the de facto complainant to pay Rs.2,70,000/- for which the accused alleged to have paid Rs.2,40,000/- on 22.03.2015 and the complainant forcibly got him executed a promissory note for Rs.1,00,000/- and further pressurised him to issue blank cheques to him, as such he issued two cheques for Rs.1,00,000/- each without dates and when the de facto complainant questioned the accused, he replied that Rs.30,000/- is the interest for 100 days for Rs.2,70,000/- and on the basis of the complaint, the police registered the crime against the petitioner for the offence punishable under Sections 384, 417, 420, 506 IPC and Section 4 of Money Laundering Act, 2002 and issued F.I.R. On 17.12.2015 on credible information and in furtherance of search proceedings, the police seized Rs.2,50,000/-, 65 promissory notes, 146 cheques and 11 small new note books from the

possession of the accused under cover of panchanama, arrested the accused and sent him to judicial custody.

3. At the stage of crime, the petitioner conveniently settled the claim before the Lok Adalat Bench, Kadapa and obtained award dt.6.04.2015 and he was acquitted. But, at the time of composition, no order regarding return of property was passed. But, filed a petition before the II Additional Judicial Magistrate of First Class, Kadapa under Section 452 Cr.P.C. for return of property seized under the panchanama. It is an undisputed fact that the property was produced before the court and it is still in the custody of the magistrate court itself.

4. It is the contention of the petitioner that when the property was seized from the possession of the petitioner during trial or enquiry, the court shall pass appropriate order for return of the property and when no crime is committed and acquitted on account of composition before Lok Adalat, the petitioner is entitled for return of property seized under the cover of panchanama from the possession of the petitioner.

5. According to Section 452 Cr.P.C. when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

6. But, here no enquiry or trial was held by the trial court, but on account of composition before the Lok Adalat, an Award was came to be passed by the District Legal Services Authority compounding the

offence on 6.04.2016. When no enquiry or trial was held, the court is not bound to pass an order for disposal of the property.

7. In normal circumstances on acquittal or discharge, the property should be returned to the person from whose custody it was seized. But, when there are circumstances showing that the accused has not claimed the property as his specifically and when there are also no grounds to hold that the property could belong to him and the question of ownership has not been gone into in the judgment and decided one way or the other and the discharge or acquittal is based upon inadequacy and doubtfulness of proof offered, the property should not be returned to the accused and the court has certainly got a discretion to return the property to the complainant. Where the court finds it difficult to come to a definite finding, the property should be returned to the person from whose possession it was seized, as held in **HARIHAR SINGH v. NAIKANTH SINGH**¹.

8. In the present facts of the case, no trial or enquiry was held, thereby there was no obligation on the part of the court to pass an order under Section 452 Cr.P.C. since conducting of enquiry or trial is a condition precedent to exercise power under Section 452 Cr.P.C.

9. Property or document regarding which an offence appears to have been committed or which has been used for commission of an offence should not be returned to the convict. Where there is a 'doubt as to ownership' of property or where a 'question of bona fide title by purchase or otherwise arises' the duty of the criminal court is to leave the parties to their remedy in a civil court. In the meanwhile the criminal court may adopt any of the following modes of disposal:

¹ 1957 Cri.L.J.1442

- i) It may return the property to the person from whom it was seized and leave the dissatisfied party to his remedy in a civil court;
- ii) It may keep the property in its custody pending the decision of a competent civil court;
- iii) In such cases where property is claimed by a person other than the person from whom it was taken, the court may impose conditions on the person to whom it is delivered in order that the property or the value thereof may be forthcoming in case the rival claimants establish a title to it.
- iv) It may where the property is subject to speedy and natural decay, order it to be sold and proceeds retained in the custody of the court until a right to it is established by civil court. Where the court finds that the property in respect of which offence has been committed partly belongs to the complainant and partly to the accused who has been discharged it may deliver the property to both on the execution of joint receipt by them.

10. In the present facts of the case, no trial or enquiry was concluded but the matter was settled before Lok Adalat due to composition between the complainant and petitioner. In such a case, the magistrate or Sessions Judge are not bound to pass an order under Section 452 (1) Cr.P.C.

11. Learned counsel for the petitioner would draw the attention of this court to the judgment of Apex Court in N. MADHAVAN v. STATE OF KERALA² wherein it was held that when trial or enquiry is concluded, the property is bound to be returned to the person from whom it was seized if he is found not guilty. There is no dispute with regard to the law declared by the Apex court. But, in the absence of any conclusion of any trial or

² AIR 1979 SC 1829

enquiry, the courts are not bound to pass an order under Section 452 Cr.P.C. In such a case, the option open to the court is to return the property to the police for return in view of the law declared by the Apex Court in PUHKAR SINGH v. STATE OF MADHYA BHARAT³.

12. In the present case, the property seized from the possession of the petitioner is 65 promissory notes, 146 cheques and 11 small note books besides cash of Rs.2,50,000/-. These promissory notes and blank cheques were allegedly obtained from third parties and the petitioner is the holder of 65 promissory notes, 146 cheques which are negotiable instruments and from the beginning it is the contention of the petitioner that he has obtained blank cheques and promissory notes from the borrowers and those documents cannot be returned to the petitioner and there is possibility of misusing those documents to recover money from various persons who signed on 65 promissory notes and 146 cheques.

13. So far as the cash is concerned, in view of law declared by the courts referred supra, since there is no conclusion of trial or enquiry, the magistrate has to return the property to the police for disposal in accordance with law. Persuaded by the judgment of Madhya Bharat (3rd supra), I deem it appropriate to direct the magistrate to return the cash of Rs.2,50,000/- to the police concerned who registered the crime against this petitioner and produce the same along with form 66 of Cr.P.C. for disposal according to law and on such return to the police, the concerned police officials are directed to dispose of the property in accordance with law and file a report before the magistrate concerned in Crime No.222 of 2015 while directing to destroy 65 promissory notes and 146 cheques and 11 small note books after three months from the date of receipt of a copy of this order.

³ AIR 1953 SC 508

14. Accordingly, the criminal revision case is disposed of.

Miscellaneous petitions, if any, pending in this case shall stand closed.

DATE:06-09-2017
ccm

M.SATYANARAYANA MURTHY,J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRL.R.C.NO.2017 OF 2017

Date:06.08.2017

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