



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2018	Pronounced on: 05.02.2018
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Revision Petition No. 1490 of 2017

M.Thiruselvam

...Petitioner/3rd party

/versus/

The State by

The Deputy Superintendent of Police,
Central Bureau of Investigation/ACB,
Chennai.

... Respondent/Complainant

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to set-aside the order made in CrI.M.P.No.3099/2017 in C.C.No.21/2012 dated 10.11.2017 on the file of the Principal Special Judge for CBI cases, VIIIth Additional City Civil Court, Chennai.

For Petitioner : Mr. R.Dhinesh Kumar

For Respondent : Mr. K.Srinivasan,
Special Public Prosecutor (CBI)

O R D E R

The Revision Petition is directed against the dismissal order passed by the Principal Special Judge for CBI cases, VIIIth Additional City Civil Court at Chennai in CrI.M.P.No.3099 of 2017 in C.C.No.21 of 2012, filed under section 452 of Criminal Procedure Code for return of Rs 32,000/- seized from the petitioner.

2. On 16.02.2012, trap proceedings was conducted by the CBI at RPF Police Station situated at Chennai Central Railway Station, Pursuant to the complaint of one Senthil against Shri.Gurusamy, Head Constable, Railway Protection Force, Central Railway Station, Chennai. During the said proceedings, besides recovery of tainted money of Rs.20,000/- from the accused person Gurusamy, a sum of Rs.32,000/- was seized from the briefcase of the petitioner kept in the RPF rest room.

3. The trial Court held the accused not guilty and ordered to return the tainted money Rs.20,000/- to the defacto complainant. In respect of Rs.32,000/- seized from the petitioner. The Court directed to deposit Rs.32,000/- in the account of Adayar Cancer Institute, Chennai.

4. The contention of the Revision Petitioner is that, though the trial against the said Gurusamy has ended in acquittal by order dated 10.02.2017, in the order of acquittal, the trial court instead of ordering return of the money to the person from whom the money was seized, has directed Rs.32,000/- seized from the petitioner to be deposited to the Cancer Institute, Adyar. Therefore, he filed petition to return the money which is lawfully belong to him. The trial court has dismissed the petition on the ground that. Once the court has passed order regarding disposal of the seized money, petition under Section 452 of Cr.P.C is not maintainable. Hence, the Revision is filed against the dismissal of his petition.

5. Heard the learned counsel appearing for the petitioner and the learned Special Public Prosecutor for the respondent. The judgment passed in C.C.No.21 of 2012 and the order passed by the trial court in Crl.M.P.No.3099 of 2017 perused.

6. Thiru. Senthil who was a clearing and parcel agent at Central Station has given a complaint on 15.02.2012 alleging Gurusamy demands Rs.10,000/- per month for smooth transport of goods and for the month of December 2011 and January 2012 he demanded Rs. 20,000/- to be paid on 16.2.2012, by evening. In the complaint he has specifically alleged that Gurusamy Constable has told him that the money is meant for Thiruselvam Inspector (the revision petitioner herein). On the day of trap (16.02.2012) after recovering tainted money of Rs. 20,000/- from Gurusamy, Constable, in the search conducted at the RPF rest room. In the brief case the petitioner, the trap team has seized Rs 32,000/-.

7. Though in the complaint the petitioner name is referred, he was not arrayed as accused but examined as prosecution witness (PW-8). The money recovered from the petitioner though sent to court, it was not marked in C.C.No.21 of 2012. The petitioner in his deposition has explained about the reason for the possession of the money. The trial court has also observed in its judgment paragraph 86 that "PW-8, Thiruselvam has admitted in his evidence that Rs 32,000/- was seized from his brief case, out of which Rs 25,000/- is the reimbursement of flag day money and Rs 7,000/- is the money kept by him to meet his relative's medical expenses."

8. The trial court has further said that, though PW-8 Thiruselvam has given an explanation with respect of Rs 32,000/- the evidence is not sufficient to pass order of confiscation of the amount to the State. Hence, Rs.32,000/- which was seized from the briefcase of PW-8 Thiruselvam and the unaccounted amount of Rs.35/- shall be deposited into the account of Cancer Institute.

9. When the prosecution has not exhibited the money seized from the petitioner, it is no more the case property. The trial court ought to have ordered to return the property to the person from whom it was seized. In this case, the categorical evidence of the prosecution is that Rs.32,000/- was seized from the petitioner. In the said facts and circumstances, no order other than return of Rs.32,000/- to the petitioner is appropriate.

10. Therefore, the Revision Petition No.1490 of 2017 is allowed. The trial court is hereby directed to return Rs.32,000/- to the petitioner Thiruselvam on getting adequate indemnity. Accordingly, the Revision Petition is allowed. No order as to costs. This order shall not stand in the way of the department, if any proceedings initiated or contemplated against the petitioner for possession of money, not properly accounted.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Deputy Superintendent of Police,
Central Bureau of Investigation/ACB,
Chennai.

2. The Special Public Prosecutor, (CBI) High Court, Madras.

+1cc to Mr.R.Dinesh Kumar, Advocate, S.R.No.8354

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.8311

Criminal Revision Petition No. 1490 of 2017

RRK(08/03/2018)