

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1615 OF 2018

ORDER:

This Criminal Revision Case is filed against the orders dated 12.04.2018 in CrI.A.No.198 of 2016 on the file of VII Additional District and Sessions Judge, Prakasam District at Ongole, confirming the orders passed in C.C.No.45 of 2015, dated 28.07.2016 on the file of Principal Junior Civil Judge, Ongole dismissing the claim of the petitioner/third party in respect of return of M.O.1 i.e. cash of Rs.3,90,000/-.

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the first respondent-State.

The facts of the case are that the Sub-Inspector of Police, Addanki Police Station filed a charge sheet against the respondents 2 & 3 herein, who are A.1 & A.2, alleging that they are in possession of Rs.3,90,000/- for distributing the same to the voters. At the time of seizure of the amount from their custody, they were in possession of voters list and carrying the M.O.1 cash in a plastic bag to influence the voters in favour of their party in Nagara Panchayati elections. Therefore, the respondents 2 and 3 herein violated the orders of the Election Code by illegally carrying the voters list and also the cash to bribe the voters. The said cash of Rs.3,90,000/- has been seized from the personal custody of the respondents 2 and 3 herein under cover of police proceedings on 29.03.2014 at 13.00 hours. A copy of the said proceedings has been produced by the learned Public Prosecutor during the course of hearing. A perusal of the same would reveal that the Sub-

Inspector of Police, Addanki Police Station, on 29.03.2014 at 11.45 a.m. received information that in connection with the Nagara Panchayat Elections, in Garataiah colony 8th line, two persons were distributing the money to the voters, to vote in respect of their party candidate. On such information, immediately, he along with his staff, went to the said colony and observed that the respondents 2 & 3 herein were carrying the 1st ward voters list and possessing Rs.3,90,000/- in a plastic bag and they were distributing the money to the voters. Immediately, they were apprehended and the said amount was seized from them and the proceedings were drawn to that effect. Pursuant to the same, immediately, a crime was registered vide F.I.R.No.128 of 2014 under Sections 188 and 171(E),(F),(H) of I.P.C. on the file of Addanki Police Station. After completion of investigation, a charge sheet was laid. The trial Court after taking cognizance of the offence, numbered the case as C.C.No.45 of 2015. In the said C.C., the petitioner herein was examined as D.W.1 claiming that the M.O.1 money belongs to him. He also got marked Exs.D.1 and D.2, the representations that were given to the Superintendent of Police claiming that M.O.1 money was seized from his house when he was temporarily absent.

After trial, the respondents 2 & 3 herein were found not guilty for the offences under Sections 188 and 171(E),(F),(H) of I.P.C. and they were acquitted of the charges. However, the M.O.1 cash was confiscated to the State by judgment dated 28.07.2016. Aggrieved by the said judgment, the petitioner being a third party, filed an appeal vide CrI.A.No.138 of 2016 on the file of VII Additional District & Sessions Judge, Prakasam District at Ongole.

The learned Sessions Judge, after hearing, was pleased to dismiss the appeal by holding that the petitioner herein miserably failed to prove that M.O.1 seized cash of Rs.3,90,000/- belonged to him, by judgment dated 12.04.2018. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that M.O.1 cash of Rs.3,90,000/- was taken away by the police from the house of the petitioner in the presence of his wife and at that time, he was temporarily absent. Immediately, after coming to know the same, the petitioner submitted representations i.e. Exs.D.1 and D.2 to the higher authorities. The learned counsel also contended that the trial Court has categorically found that no case is made out against the respondents 2 & 3 herein and they were acquitted of the offences. Therefore, the money which was seized is only from the house of the petitioner herein and as such he is entitled for the same.

Per contra, the learned Public Prosecutor appearing for the first respondent-State would contend that the M.O.1 cash was seized from the personal custody of the respondents 2 & 3 herein and to that effect, the proceedings dated 29.03.2014 were also drawn by the Sub-Inspector of Police, Addanki Police Station, which clinchingly established that the money was seized from the personal custody of respondents 2 & 3 herein, but not from the wife of the petitioner from his house when he was temporarily absent. He also contended that the petitioner has not produced any evidence either before the trial Court or before the lower appellate Court to prove that M.O.1 cash belonged to him.

Relying on the police proceedings, dated 29.03.2014 and also after hearing the arguments of the petitioner herein, the lower appellate Court was pleased to observe that 'the petitioner herein was examined as D.W.1 and in his chief-examination, he has categorically stated that he is no way concerned with the criminal case. On 29.03.2014, the Sub-Inspector of Police, Addanki Police Station accompanied by 20 police officials came to his house and taken away M.O.1 cash from his wife in his temporary absence. He approached the police claiming M.O.1, but he was informed that it was already sent to the Court. The said incident was reported by the petitioner herein under Ex.D.1 to the Superintendent of Police and other officials. In the absence of acknowledgement under Ex.D.1, the appellant cannot claim that Ex.D.1 was served on the person to which it was meant for. Even if Ex.D.1 is served on the Superintendent of Police concerned, no action is taken in this regard. When no action is taken in this regard, he ought to have taken legal action by filing a private complaint in the Court against the police officials concerned, who allegedly taken away the cash-M.O.1 from his wife. The inaction on the part of the petitioner and his wife, itself speaks volume regarding their *bona fides* in claiming the said amount'.

Admittedly, the petitioner has not produced any evidence even during the course of trial in the main case or at the appellate stage that the cash-M.O.1 belongs to him and he has drawn the money from any of the bank and kept the same in his house prior to 29.03.2014. Though it is said that the cash-M.O.1 was seized from the custody of his wife, she was not examined as a witness before the trial Court. Under these circumstances, the lower

appellate Court, disbelieved the version of the petitioner and dismissed the appeal.

From a perusal of the above said record and also the observation of the lower appellate Court, it appears, after seizure of the M.O.1 cash from the custody of respondents 2 & 3, the petitioner appears to have brought into existence Ex.D.1 alleged to have been submitted to the Superintendent of Police, Prakasam District. Though the petitioner is specifically canvassing that the said money belongs to him and he has submitted Ex.D.1, admittedly, Ex.D.1 does not contain the acknowledgement on whom it was served. He has not come out with any evidence to show that M.O.1 cash belonged to him. In these circumstances, this Court is of the opinion that the petitioner has miserably failed to prove that the seized M.O.1 cash belongs to him. As such there are no merits in the Criminal Revision Case.

Accordingly, the Criminal Revision Case is dismissed. The copy of proceedings dated 29.03.2014 produced to this Court by the learned Public Prosecutor is made part of the record.

Pending miscellaneous petitions, if any, shall also stand closed.

12th JULY 2018.
Tsr

P.KESHAVA RAO,J