

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3101 OF 2017

JUDGMENT:

The petitioner herein, who is third party to the proceedings, filed the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'), questioning the order, dated 08-08-2017, in CrI.M.P. No.1085 of 2017 in Crime No.18 of 2016 of Crime Investigating Department Police Station, Hyderabad, passed by the learned VI Additional Chief Metropolitan Magistrate, Hyderabad.

2. By the aforesaid order, the learned Chief Metropolitan Magistrate refused to accede to the request to release seized property which consists of Flat No.303, MYM Estate, Somajiguda, Hyderabad. In fact, when the petitioner made the request, he described the property thus:

“Original Registered Sale Deed Doct.No.3482/2016 of Jt.SRO, Golconda dt: 20-07-2016 pertains to Flat No.303, Mym Estate, Somajiguda, Hyderabad which is in the name of the petitioner”

3. The petitioner is no other than wife of accused No.39 in the above crime. The ground, on which, such a request made, was that if the property is kept in the custody of police or Court, it is likely to be wasted or deteriorated in value and assuring that she would undertake

to produce the property whenever directed to do so, sought to release the property.

4. Heard Sri S. Prasad Babu, learned counsel for the revision petitioner, and the learned Special Assistant Public Prosecutor for the State of Telangana.

5. The learned counsel for the revision petitioner would submit that, in fact, the petitioner has become shelter-less and the possession of the flat is only sought towards interim custody and, therefore, there ought not to be any objection to the respondent - State, hence, sought to release the property.

i) He places reliance in **Amrit Lal Kumawat and others v. The State of Rajasthan and another**¹ rendered by a Single Judge of Rajasthan High Court, contending that police has no power to seize disputed immovable property either under Section 102 of Code or pass order for disposal of property under Section 451 of the Code. He laid emphasis on paragraph No.14, which reads thus:

“14. For reasons mentioned above, I am of the opinion that immovable property like lands, houses, mountains, rivers, roads and streets and similar properties cannot be seized by a police officer under Section 102 of the Criminal Procedure Code nor the Magistrate can pass any order under Section 451, Cr.P.C. in respect of such properties. If there is a dispute regarding the title to any immovable property it is the competent civil Court which

¹. 1998 Crl.L.J. 3032

alone can exercise jurisdiction by adjudicating disputed question of title. If a person has been deprived of the possession of immovable property, generally it is the civil Court which alone has the jurisdiction to restore the possession to the person entitled thereto. An exception to the general rule is laid down in Section 456 of the Criminal Procedure Code which provides that when a person is convicted of an offence attended; by criminal force or show of force or by criminal intimidation and it appears to the Court that such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that the possession of the same be restored to that person. The power under Section 156 may be exercised by the trial Court, appellate Court, or the revisional Court. The power conferred by Section 456 of the Criminal Procedure Code cannot be exercised during the period the investigation, inquiry, of trial is in progress. This power can be exercised after the conclusion of the trial and only in those cases in which the Court convicts the accused and the offence alleged is an offence attended by criminal force, show of force, or criminal intimidation in dispossession and dispossession by criminal force, show of force or intimidation is proved beyond reasonable doubt. If there are disputes about the possession over any immovable property and there is an apprehension of breach of peace, the proceedings may be instituted in the Court of the Executive Magistrate under Section 145 of the Criminal Procedure Code and order of attachment may be passed by the Executive Magistrate under Sub-section (1) of Section 146 of the Criminal Procedure Code if the conditions laid down in that section are satisfied. The police investigating the case does not appear to be entitled to seize the immovable properties of the abovementioned description in exercise of the powers

under Section 102 of the Criminal Procedure Code nor the Magistrate appears to be empowered under Section 451 of the Criminal Procedure Code to make any order regarding the immovable properties of the above-mentioned description. In the instant case, the order dated 11-3-97 passed by the learned Addl. Civil Judge (Junior Division)-cum-Judl. Magistrate No. 2 (North), Udaipur must be said to be without jurisdiction and, on this count, it deserves to be quashed and set aside.”

The aforesaid decision was rendered in the context of Executive Magistrate passing an order under Section 145 of the Code. In that context, the said view was expressed by the learned Single Judge . Certainly, it does not apply to the fact-situation occurring in the present case.

ii) He has also placed reliance in **V. Sundaram v. The Deputy Superintendent of Police, Economic Offences and Wing and others²**, rendered by a learned Single Judge of Madras High Court. In paragraph No.12, on which emphasis is laid, the learned Single Judge expressed thus:

“12. This Court is in complete agreement with the law laid down by the Full Bench of the Bombay High Court and the Kerala High Court with regard to the power of the police officer to seize immovable properties under Section 102, Cr.P.C. The Deputy Superintendent of Police, by couching the impugned communication in a camouflaged language, is in fact, indirectly attaching the properties of the accused via the backdoor, which is not

². Judgment, dated 27.07.2015 in W.P. No.11221 of 2015

permissible. If the Deputy Superintendent of Police is desirous of safeguarding the interest of the depositors, he should have immediately taken steps to send a report to the Government for initiating action under Section 3 of the Criminal Law Amendment Ordinance and not through such a subterfuge.”

6. The relief as mentioned in the above would show that the document seized was a title deed, and that has been the purport of the seizure when looked at the extracted portion. Even otherwise, as could be seen from the case projected by the Investigating Agency, accused No.39, who is the husband of the present revision petitioner, alleged to have confessed that one U.S. Gupta received Rs.1.59 Crores from him, remaining Rs.1.00 Crore was retained by him, out of which, an amount of Rs.20.00 lakhs was taken by Ramakrishna and he had taken Rs.80.00 lakhs, and from the amount of Rs.80.00 lakhs, he has spent Rs.1.00 lakh for his personal use and Rs.34.00 lakhs was diverted to purchase the flat, which is subject property now, and the remaining cash of Rs.45.00 lakhs was hidden in his house by him.

7. A perusal of the seizure *panchanama* would show that from the said house, the amount of Rs.45.00 lakhs was seized and the relevant details have been mentioned therein showing the denomination and the number of the notes under each denomination from the very same flat. When investigation is still under progress, it is not a fit case to accede to the relief now sought for. There is no

error in the order passed by the learned Magistrate. The order does not warrant interference.

Therefore, the Criminal Revision Case is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

January 05, 2018.

Mgr

