



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.17033/2019

N.Palani

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Petitioner

Vs

State rep.by
The Inspector of Police
Vigilance & Anti Corruption
Head Quarters, Chennai-16.
Crime No.4/2019/DVAC HQS

..

Respondent

Prayer:- Petition filed under section 482 Cr.P.C., to set aside the order dated 09.04.2019 made in Crl.MP.No.2303/2019 on the file of the learned Chief Judicial Magistrate, [Special Judge], Chengalpattu and the interim custody amount of Rs.5,70,000/- to be returned to the petitioner.

For Petitioner : Mr.R.Murugesan

For Respondent : Mr.K.Prabakar, APP

ORDER

The present petition is filed by the petitioner seeking to set aside the order dated 09.04.2019 made in Crl.MP.No.2303/2019 on the file of the learned Chief Judicial Magistrate [Special Judge], Chengalpattu and to direct the interim custody of Rs.5,70,000/- to the petitioner.

2 A FIR came to be registered by the respondent as against five accused and the petitioner is arrayed as A-1. The allegation as per the First Information Report was that, on a surprise Joint Inspection by the District Inspection Cell, Kancheepuram and the Department of Vigilance and Anti Corruption on 18.02.2019 between 18.30 hours and 00.00 hours, it was found that the petitioner, by abusing his official power as Sub Registrar [Grade I], had received illegal gratification to the tune of Rs.5,70,000/-. The petitioner has filed Crl.MP.No.2303/2019 under section 451 Cr.P.C., on the file of the learned Chief Judicial Magistrate, Special Judge at



Chengalpattu, seeking return of the above said amount on the ground that he had availed Personal Loan with the State Bank of India, Thindivanam Branch, to the tune of Rs.10 Lakhs and the said amount was also credited to his account and that, out of the said amount, he had transferred a sum of Rs.5 lakhs to his brother-in-law through NEFT and that on 18.02.2019, his brother-in-law has repaid the said sum. Further, it is the averment of the petitioner in the affidavit filed in support of CrI.MP.No.2303/2019 that Rs.70,000/- was his personal savings and that he was having the said sum for giving treatment to his ailing and aged parents and citing the above reasons, he had filed the petition for return of Rs.5,70,000/-.

3 The respondent had filed a counter affidavit in CrI.MP.No.2303/2019 taking the stand that the intimation about the search was informed to the petitioner in advance and that when the cash of Rs.5,70,000/- was seized from the residence of the petitioner, no proper and plausible explanation was forthcoming from the petitioner. It is the further stand of the respondent that if the amount seized is really accountable, then the petitioner could have offered his explanation to the officials at the time of seizure itself and there is no necessity to file a petition seeking for return of the said amount citing the above reasons. It is also the stand of the respondent that the unregistered Sale Agreement has been created only for the purpose of this case and the same cannot be relied upon. In sum and substance, it is the categorical stand of the respondent that the petition filed u/s.451 Cr.P.C., seeking for the return of cash to the tune of Rs.5,70,000/-, is not maintainable.

4 The Trial Court, upon consideration of the materials placed, held that the petitioner had not proved his case by adducing sufficient and plausible explanation for the present, had dismissed CrI.MP.No.2303/2019. Aggrieved against the said dismissal order, the present petition is filed.

5 When the petition was filed, the papers were returned by the Registry on 04.06.2019, raising a query regarding maintainability of the petition filed under section 482 Cr.P.C., against the dismissal of the petition filed u/s.451 Cr.P.C? The learned counsel for the petitioner represented the papers on 06.06.2019, stating that 'the impugned order is passed u/s.451 of Cr.P.C., which says order is to be passed pending Trial. Therefore, any order passed u/s.451 of Cr.P.C. is interlocutory and as such, it is barred under section 397[2] of Cr.P.C., to file a Revision Petition. Therefore, petition filed u/s.482 of Cr.P.C. is maintainable.' Since the Registry raised a doubt regarding maintainability, the matter was posted before the



Court on 26.06.2019 and this Court had directed the Registry to number the petition, if it was otherwise in order and to list the same for admission.

6 When the matter came up for admission today, the learned Additional Public Prosecutor submitted that the investigation is still pending in Crime No.4/2019/DVAC HQS and it is yet to be conclusively decided as to how the money was in the possession of the petitioner. He would also submit that the amount of Rs.5,70,000/- has been transferred from the file of the Court below to the Treasury.

7 The learned counsel for the petitioner would submit that the amount lying in Treasury will not fetch any interest and suitable direction may be given to deposit the said amount in the Interest Accruing Fixed Deposit in any of the Nationalised Banks and prays for appropriate orders.

8 Though this Court is not inclined to grant the relief sought for by the petitioner at this stage, as the investigation is still pending in Crime No.4/2019/DVAC HQS, this Court directs the learned Chief Judicial Magistrate cum Special Judge, Chengalpattu, to withdraw the amount of Rs.5,70,000/- from the Treasury and deposit it in the Interest Accruing Fixed Deposit in any Nationalised Bank.

9 The Criminal Original Petition stands dismissed with the above direction and also with a liberty to the petitioner to file a fresh application after the investigation is completed in the above crime number and the Trial Court shall decide the case on merits at that stage.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

AP

To

1.The Chief Judicial Magistrate-cum-Special Judge,
Chengalpattu.

2.The Inspector of Police
Vigilance & Anti Corruption
Head Quarters, Chennai-16.



3.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.R.Murugesan, Advocate, S.R.No. 54225

Cr1.OP.No.17033/2019

BP (CO)
GN(01/08/2019)