

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.533 of 2019

Manish D Bajaj

Petitioner/Third party

Vs.

State represented by
The Deputy Superintendent of Police,
CBCID, Head Quarters,
Egmore, Chennai.

Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 10.05.2019 in Crl.M.P.No.1776 of 2019 on the file of the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai - 600 008.

For petitioner Mr.M.Suresh

For respondent Mrs.P.Kritika Kamal
Government Advocate
(Crl. Side)

ORDER

This petition has been preferred seeking to set aside the order dated 10.05.2019 passed in Crl.M.P.No.1776 of 2019 on the file of the CCB & CB-CID Metropolitan Magistrate, Egmore, Chennai - 600 008.

2. Based on the special report given by K.R.Senthil Kumar, Inspector of Police (CBCID - Metro), a suo motu case in CB-CID (Metro) Crime No.1 of 2013 was registered on 16/17.05.2013, for the offences under Sections 120-B and 420 IPC and Section 4 (d) of the Tamil Nadu Gaming Act, 1930 (for brevity "the TNG Act").

3. On reading the special report which formed the basis of the registration of the FIR, the following come to light:

3.1 The incident in this case had taken place on 16/17.05.2013, when the IPL match between Kings XI Punjab and Delhi Daredevils was going on in Dharamsala in Himachal Pradesh.

3.2 On prior intelligence, the CB-CID police raided the house of one Harish Bajaj (A1) and found that he was working on his laptop in "Cricket bety live.com" and was betting. Along with him, his employee Eashwaran was also present. The CB-CID police thought that the accused was indulging in match fixing and therefore, they arrested Harish Bajaj (A1) and questioned him. They also questioned Eashwaran.

3.3 During interrogation, Harish Bajaj (A1) stated that he is a bookie and there is another bookie by name Lucky (A8). He further stated that Virudhachalam (A2), Kitty (A3), Deepak Bajaj (A4), Sanjay Kumar Bafna (A5), Dilip Kumar B.Jain (A6), Prasanth M.Paun (A7), Pappu (A9), Gowtham (A10), Mahaveer (A11), Raja (A12), Sunil Bajanlal (A13), Ugamraj Surana (A14), P.Sanjeev Ahuja (A15) and Karankumar (A16) are all punters who join the bet conducted by him and Lucky (A8). The interrogation of the accused did not reveal the involvement of any player or the offence of match fixing.

3.4 Pursuant to the confession statement of Harish Bajaj (A1), the police arrested Deepak Bajaj (A4) on 17.05.2013 and recorded his confession statement. In the police confession statement, Deepak Bajaj (A4) has stated that he was also involved in betting when IPL matches were going on. He further stated that he would use his mobile phone for the purpose of betting and by engaging in betting, he has earned Rs.5,00,000/-, which, he has kept in his residence and is willing to hand over the same to the police.

3.5 The respondent police went to his house and seized his Samsung mobile phone, laptop and cash of Rs.5,00,000/- which were handed over by him to them, under the cover of Form-95 on 17.05.2013, under due acknowledgment. The seized cash was handed over to the jurisdictional Magistrate who has deposited the amount in the Court account in the bank. As regards the Samsung mobile phone and laptop, custody was given to the police for the purpose of investigation and to disinter the information found therein.

3.6 Similarly, the police arrested some of the bookies and punters who were gambling on various aspects such as outcome of a cricket match; how many runs a particular batsman would score; how many wickets a particular bowler would claim, etc. All the arrested accused, including Deepak Bajaj (A4), were released on bail on various dates.

4 Deepak Bajaj (A4) preferred M.P. No.3741 of 2013 before the XI Metropolitan Magistrate, Saidapet, Chennai in CB-CID (Metro) Cr. No.1 of 2013 under Section 451 read with 457 Cr.P.C.

seeking interim custody of the items seized from him, viz., Samsung mobile phone, laptop and cash of Rs.5 lakhs. After hearing the prosecution, the XI Metropolitan Magistrate dismissed the petition on 05.07.2013 on the ground that the investigation is pending.

5. After completing the investigation, the police filed final report before the XI Metropolitan Magistrate, Saidapet, Chennai, against twenty three accused including Deepak Bajaj (A4) for the offences under Sections 45, 46 and 49-A of the Tamil Nadu City Police Act, 1888 and under Section 4 (1) (2) of the TNG Act. The sum and substance of the allegation is that the accused, who are bookies and punters, were involved in the game of betting amongst themselves on the outcome of IPL matches. It is not the case of the police that the accused had been cheating the public. Hence, the provisions of the Indian Penal Code were not invoked.

6. The learned XI Metropolitan Magistrate perused the final report and felt that further investigation is required to be done in order to find out if there had been match fixing with the connivance of players and so, directed the police to conduct further investigation under Section 173(8) Cr.P.C.

7. Accordingly, the police conducted further investigation and filed additional final report on 21.06.2018 ruling out the possibility of match fixing. Thereafter, the case was transferred from the file of the XI Metropolitan Magistrate, Saidapet, Chennai to the file of the Magistrate Court for CCB & CB-CID cases, Chennai. Till date, no cognizance has been taken on the final report and the same is pending.

8. While that being so, Deepak Bajaj (A4) died on 19.01.2019 leaving behind as his legal heirs, Varsha Bajaj (widow), Manish D. Bajaj (petitioner/son) and Priyanka Bajaj (daughter) vide legal heirship certificate dated 15.03.2019.

9. Pursuant to the death of Deepak Bajaj (A4), his son Manish Bajaj, the petitioner herein filed a petition in CrI.M.P.No.1776 of 2019 under Section 451 Cr.P.C. before the Metropolitan Magistrate Court for CCB/CB-CID Cases, Chennai, for return of Samsung mobile phone, laptop and cash of Rs.5,00,000/-, which has been dismissed on 10.05.2019, aggrieved by which, the petitioner is before this Court.

10. Heard Mr.M.Suresh, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondent/State.

11. The learned counsel for the petitioner submitted that all the three items, viz., Samsung mobile phone, laptop and cash, were admittedly seized from Deepak Bajaj (A4) and Deepak Bajaj (A4) died on 19.01.2019, even before cognizance was taken by the Court on the final report; therefore, the criminal prosecution against him stands abated on his death and hence, the properties seized from him should be handed over to his family. He further pleaded for interim custody only.

12. Per contra, Mrs. Kritika Kamal, learned Government Advocate (Crl. Side) contended that the Samsung mobile phone seized from the house of Deepak Bajaj (A4) has data to show that he was in constant touch with the other accused during the relevant period and therefore, the Samsung mobile phone with its contents will have to be marked during trial. As regards the laptop, she contended that nothing incriminating was found therein. With regard to cash of Rs.5 lakhs, she strenuously contended that the same being proceeds of the crime, has to be confiscated to the State. In support of her contentions, she placed reliance upon the provisions of the TNG Act and the Madras City Police Act.

13. It is her further contention that the confession of the accused can be used in enquiry under Section 451/452 Cr.P.C., as held by the Supreme Court in Mahesh Kumar vs. State of Rajasthan¹ and Bharat Sanchar Nigam Ltd. vs. Suryanarayanan and others².

14. This Court gave its anxious consideration to the rival submissions.

15. What is sought in this petition is interim custody of seized articles under Section 451 Cr.P.C. The underlying principle for deciding a petition under Section 451/452 Cr.P.C. has been laid down by the Supreme Court in N. Madhavan vs. State of Kerala³ and the same is profitably extracted below:

"10 The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (a) or

1 1990 (Supp.) SCC 541 (II)

2 2019 (1) MWN (Cr.) 120 (SC)

3 [(1979) 4 SCC 1]

(b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt – as in the instant case – that the property in question was seized from the custody of such accused and belonged to him.”

Of course, in a given case, there can be a departure from this rule. For example, in a theft case, where a property has been recovered from the accused, it can be handed over to the complainant even in the event of the accused being discharged or acquitted or dies during trial.

16. The police confession of the deceased accused Deepak Bajaj (A4) that he had also joined the bet conducted by Harish Bajaj (A1), is inadmissible in evidence in view of the bar under Section 25 of the Evidence Act, even if Deepak Bajaj (A4) had been alive. Admittedly, Deepak Bajaj (A4) died even before the Court had taken cognizance on the final report. When he was alive, he preferred an application seeking return of the same properties in Crl.M.P. No.3741 of 2013 and that petition was dismissed on the ground that investigation was pending. As held by the Supreme Court in Mahesh Kumar (supra), the police confession of an accused can be relied upon in an enquiry under Section 451/452 Cr.P.C. to arrive at the conclusion as to whom the property can be given. It cannot be used to hold the accused guilty, that too, a dead accused.

17. In the police confession of Deepak Bajaj (A4), he has stated that he is a financier by profession and has his office in his residence. In the last portion of his confession, it is recorded that by indulging in betting, he has earned a sum of Rs.5 lakhs which he has kept in his house and that he would hand over the cash, Samsung mobile phone and laptop to the police. Pursuant to his confession, the police have effected seizure of his Samsung mobile phone, laptop and cash of Rs.5 lakhs from his house, as stated above.

18. At the time of recording the confession, the police thought that this is a pan India match fixing case involving high profile persons, including top Cricket players. However, ultimately, at the close of the investigation, the police found that the bookies and punters placed bets amongst themselves on the outcome of the number of runs a batsman would probably score and the number of wickets a bowler would probably claim. There is absolutely no shred of material to show that Deepak Bajaj (A4) was a bookie. The allegation against him in the charge sheet is that being a punter and for the purpose of gaming on the scheme of wagering or betting for IPL Cricket matches, he placed bets with Lucky (A8) during the IPL Season VI matches. This allegation merely shows that he had played with punters in the betting game. Now that he has died, the prosecution against

him gets extinguished. Be it noted, he is not facing a prosecution under the Prevention of Corruption Act for amassing wealth as a public servant nor is there any complaint from any person against him to the effect that they were cheated by him. Except the police confession that he has earned Rs.5 lakhs by participating in betting, there is no iota of material to connect this amount as proceeds of the alleged crime. That is why, even in the final report (charge sheet) against him, there is no reference to Rs.5 lakhs. The allegation in the charge sheet qua Deepak Bajaj (A4) is extracted below:

"Charge No.IV against A-4 u/d 49-A (a)(vi) and (d) of the Tamil Nadu City Police Act, 1988.

A4-Deepak Bajaj, Old No.4, New No.7, I Cross Street, Kilpauk Garden, Chennai -10, being a punter and for the purpose of gaming on the scheme of wagering or betting for IPL Cricket matches placed bets with A-8 Lucky @ Narpath during the IPL Season - 6 matches and thereby A-4 appear to have committed an offence punishable u/s 49-A(a)(vi) and (d) of the Tamil Nadu City Police Act, 1988."

19. In a hypothetical case where four gamblers, on seeing the police, leave cash and dice on the gambling table and flee, the money and dice so recovered would be relevant under Section 7 of the Evidence Act and the conduct of the accused fleeing on seeing the police, would be relevant under Section 8 of the Evidence Act. This is not such a case. That is why, the cash of Rs.5 lakhs has not been retained by the Magistrate in "as is where is" form and has been deposited in the Court account. Further, the currency notes are not counterfeit ones to be preserved and marked as material objects. Even in the police confession, there is no detail or break-up as to how Deepak Bajaj (A4) earned Rs.5 lakhs.

20. Further, the police have not denied the following facts:

- Seizure was from the house of Deepak Bajaj (A4)
- Deepak Bajaj (A4) has filed an application when he was alive for return of properties, which was dismissed.
- Deepak Bajaj (A4) has died on 19.01.2019.
- The petitioner is one of the legal heirs of the Deepak Bajaj (A4), the other legal heirs being his widow and daughter.
- The Court has not taken cognizance on the final report.

21. In such view of the matter, the case of the petitioner deserves consideration qua interim custody of laptop and cash of Rs.5 lakhs, however, subject to the following conditions:

- a) The petitioner shall execute a bond for Rs.50,000/- with two sureties to the satisfaction of the Trial Court.
- b) The petitioner shall also file an affidavit from the other two legal heirs to the effect that they have no objection in the petitioner taking interim custody.
- c) On such bond and affidavit being filed, the Trial Court shall grant interim custody of the laptop and cash of Rs.5 lakhs to the petitioner with an undertaking that he will hand over the same to the Court as and when required.

22. However, the prayer for return of Samsung mobile phone cannot be acceded to by this Court since the same may be required as a piece of evidence to prove the charges against the co-accused.

In fine, this criminal revision stands partly allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd/cad

To

1. The CCB & CBCID Metropolitan Magistrate
Egmore
Chennai - 600 008
2. do The Chief Metropolitan Magistrate,
Chennai.

3. The Deputy Superintendent of Police
CBCID, Head Quarters
Egmore
Chennai

4. The Public Prosecutor
Madras High Court
Chennai 600 104

+lcc to M/s.M.Suresh, Advocate sr.49915

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