24.09.2021
Sl. No.11

Court No.8
BM

CRR 379 of 2021
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IA. No.:CRAN 1/2021

Lakshmi Kanta Sau
Vs.
The State Of West Bengal And Anr.

(Via Video Conference)

Mr. Brajesh Jha
Mr. Rishav Kumar Thakur
Mr. Ravi Ranjan Kumar
Mr. Saket Sharma ... for the petitioner

Mr. Madhusudan Sur, learned APP
Mr. Dipankar Paramanick ... for the State

Mr. Dhiraj Trivedi
Mr. Sushil Kumar Mishra ... for the opposite party no.2

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure whereby and whereunder the order dated 03.03.2020 passed by learned CJM, Paschim Burdwan in connection with GR Case No. 1021/19 (arising out of Asansol GRPS Case No. 27/19 dated 12.05.2019) under Section 397/411/414 of Indian Penal Code has been assailed as the learned Magistrate rejected the prayer of the petitioner for return of the seized cash.

The petitioner's case is that he has been arraigned as an accused in connection with the said case, on the allegation that on 12.05.2019, the S.I., Ashok Shyam Chowdhuri of Asansol GRPS along with Officers on patrolling duty at Asansol platform no.5 area apprehended the petitioner along with one Gautam Chattopadhay at around 16.05 hrs. and recovered Rs.1 Crore from the possession of the petitioner.

The petitioner was arrested and subsequently released on bail. It is submitted that the seized money belong to Bharatiya Janata Party, West Bengal and the same was being brought to the party office treasury which fact was revealed to the Investigating Officer during the investigation but the Investigating Officer refused to accept the same. It is further submitted that the petitioner appeared before the opposite party no.2, Income Tax Department on being summoned and explained about the fact that the money belong to Bharatiya Janata Party. It is pointed out that Sunwar Dhanania, the treasurer of State Unit of Bharatiya Janata Party was served summon to appear in person to explain regarding the source of money but on receipt of the notice by Investigating Officer Sri Sunwar Dhanania preferred the revisional application being no. 1304 of 2019 before this Hon'ble Court for quashing of the proceeding against him and by an order dated 30.05.2019, the Hon'ble Court was pleased to stay all proceedings as against him.

Learned Advocate for the petitioner relied on the observation in paragraph 4 of the decision in case of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs.State Of Gujarat* reported in (*2002) 10 SCC 283* laying down procedure for custody and disposal of valuable articles and currency notes, seized liquors, narcotic drugs and vehicles thus—

*"4. The object and scheme of the various provisions **<u>of the Code</u>** appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements **<u>of the Code</u>** is that the articles concerned must be produced before the Court or should be in its custody. The object **<u>of the Code</u>** seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."*

Provision of Section 451 provides for that when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fir for the proper custody of such property pending the conclusion of the inquiry or trial. Thus, it is understood that to avoid such situation powers under Section 451 Cr.P.C should be exercised promptly and at the earliest as it is of no use to keep valuable articles and currency notes in police custody for years till the trial is over.

The ground taken in nut shell is that the learned Court failed to appreciate that all the documents produced by the petitioner clearly revealed that the money belong to the petitioner and, therefore, there was severe illegality in not returning the money and failed to appreciate the decision cited above.

The opposite party no.2, Assistant Director of Income Tax (Investigation), Unit-Durgapur, has submitted affidavit in compliance of this court's order dated 13.08.2021.

Mr. Dhiraj Trivedi, learned Advocate for the opposite party no.2 submits that a petition was submitted before the learned court of Chief Judicial Magistrate, Asansol for handing over the seized unaccounted cash of Rs.1 crore to the Income Tax Department which was seized by G.R.P.S, Asansol on 12.05.2019. A report by Mr. Baleswar Pandey, Assistant Director of Income Tax (Investigation), Durgapur was also filed that no requisition was made to the Investigating Officer for seeking custody of the seized cash amount as required under Section 132A of the Income Tax Act, 1961. So, considering the nascent stage of investigation, the learned Chief Judicial Magistrate rejected the prayer, however, liberty was given to make requisition to the investigating authority to get custody of the said seized amount.

The Officer-in-Charge, Asansol, GRPS informed by his letter DR No.912/19 dated 16.05.2019 that as per order of crime WB vide Org. No.460/CS dated 13.05.2019, the CID, West Bengal has assumed the investigation of the case. Thereafter, the DDI, Durgapur, CID West Bengal was contacted on 23.05.2019, and the opposite party no.2 was informed to contact the Additional Director General of Police, C.I.D, West Bengal, Bhabani Bhaban, Alipore, Kolkata-27 for taking possession of the seized cash.

With the approval of the Principal DIT(Inv.), Kolkata vide F. No.38/Pr.DIT(Inv.)/Kol/2019-20/2407 dated 30.05.2019, a letter was written to the Additional Director General of Police, C.I.D, West Bengal vide the office letter No. ADIT(Inv.)/DGP/Cash Seizure/2019-20/321 dated 04.06.2019 requesting for necessary direction to the DDI, Asansol-Durgapur DD, CID, W.B and subsequently to the Officer-in-Charge, G.R.P.S, Asansol for handing over the seized cash of Rs.1 crore to the Income Tax Department but no reply has been received at their end till date.

It is pointed that in order to examine the source of cash of Rs.1 crore seized by the G.R.P.S, Asansol on 12.05.2019, a summon was issued under Section131 of the Income Tax Act, 1961 to Sri Laxmi Kant Sau And Sri Goutam Chattopadhyay vide a office letter No. ADIT(Inv.)/DGP/Cash Seizure/2019-20/314 and No. ADIT(Inv.)/DGP/Cash Seizure/2019-20/313 dated 30.05.2019 respectively for producing documentary evidence of source of money and purpose of carrying such huge amount in cash along with supporting books of accounts, but it was returned to the department through postal department as addressee was not known. On 19.06.2019, a letter was received from S. K. Singh, A/R stating that the cash seized belongs to BJP Party fund with a request to conduct investigation proceedings of Sri Laxmi Kant Sau and Sri Goutam Chattopadhyay at Kolkata office. Afterwards a fresh summon was issued under Section 131 of the Income Tax Act, 1961 to Sri Laxmi Kant Sau and Sri Goutam Chattopadhyay vide this office letter No. ADIT(Inv.)/DGP/Cash Seizure/2019-20/361 and No.

ADIT(Inv.)/DGP/Cash Seizure/2019-20/362 dated 20.6.2019 respectively for hearing on 25.06.2019 and statements of Sri Laxmi Kant Sau and Sri Goutam Chattopadhyay on oath was recorded under Section 131 of the Income Tax Act, 1961 on 25.06.2019.

It transpired from their statements that Sri Sanwar Dhanania, Treasurer, BJP, West Bengal through mobile on 11.5.2018 had instructed to collect cash of Rs.1 crore from Lakhan Ghorai, West Burdwan district president of BJP namely, Sri Bajrang Lal Agarwal, prop of Gyan Bharti Book Stall, Opposite Bandhan Bank, Station Road, Burnpur and deliver the same to BJP State Party Office at 6 no. Muralidhar Sen Lane, Kolkata. It is also depicted that the said person examined by the Income Tax Authority was a worker of BJP for last 10 years and he had to follow the instruction. Apart from that he had no role in the matter. The statements of Mr. Sanwar Dhanania was also recorded on oath on 10.07.2019 on which he confirmed that he had directed Shri Lakshmi Kanta Sau to collect cash amounting to Rs.1 crore from Sri Lakhan Ghorai, West Burdwan District President of BJP on 12.05.2019 who in turn had directed him to collect the same from Sri Bajrang Lal Agarwal at Opposite Bandhan Bank, Station Road, Burnpur.

Report further reflects that the amount of Rs.1 crore was withdrawn from Bank Account number 1063002100013076 of Bharatiya Janta Party of Punjab National Bank, College Street Branch, Kolkata-700 073 on 02.05.2019 and that the said amount of Rs.1 crore was sent to Asansol BJP District Office on 03.05.2019 through party workers for party related work. A copy of the Bank statement was also submitted before the Income Tax authority and the cash book revealed that a sum of Rs. 1 crore was remitted to Asansol District on 3.5.2019 which corroborates the statement of Sri Sawar Dhananiya, regarding remittance of cash of Rs.1 crore to Asansol BJP Office.

Simultaneously a summon under Section 131 of the Income Tax Act, 1961 was issued to Sri Bajranglal Agarwal on 30.05.2019 in connection with the seizure of cash of Rs.1crore from Shri Lakshmi Kanta Sau at Asansol Railway Station on 12.05.2019 by Asansol G.R.P.S and a fresh summon was issued to him on 15.07.2019 duly served on 23.07.2019. In reply to the summon, he sought time of 15 days to appear before them. Thereafter, a fresh summon was issued on 05.08.2019 refixing of hearing on 09.08.2019, on 16.08.2019 and on 22.08.2019 but ultimately, Sri Bajranglal Agarwal was provided final opportunity to appear on 27.08.2019 but again failed to appear. After investigation and enquiry it was ascertained by the Income Tax Department that the seized cash of Rs.1 crore belong to BJP which was duly accounted as per their Bank accounts and cash book. The Income Tax Department has no longer claim for the possession of the seized cash.

My attention is invited to order passed by the learned Chief Judicial Magistrate by learned advocate for the State to submit that the Investigating Officer sought permission of the Court to deposit the amount under seizure with Asansol Treasury but such prayer of the investigating officer was rejected in view of the stay passed by a co-ordinate Bench of this Hon'ble Court in revisional application in

CRR 1304 of 2019 which is reflected from the order dated 27.11.2019 passed in GRPS Case No.27/2019, GR Case No.1021/2019 by the learned Chief Judicial Magistrate, Paschim Bardhman, Asansol.

It is also understood that the amount seized by the GPRS, Asansol neither belong to Bajranglal Agarwal nor to Sri Sawar Dhananiya, or the petitioners namely and Sri Goutam Chattopadhyay or Sri Laxmi Kant Sau. Therefore, the order passed by the learned Chief Judicial Magistrate, Paschim Medinipur, appears to be substantially correct because money seized from them were withdrawn from the Bank account No. 1063002100013076 of Bharatiya Janta Party of Punjab National Bank, College Street Branch, Kolkata-700 073 and entrusted to them by the Treasurer of the BJP party.

Mr. Trivedi, learned advocate for the opposite party no. 2 and Mr. Brajesh Jha, learned advocate for the petitioner submit that if the money under seizure is deposited to the said account of Bharatiya Janta Party of Punjab National Bank, College Street Branch, Kolkata-700 073 inasmuch as the petitioner herein is not claiming return of any money personally to him.

In the context of the above, and in consideration of the report of the Income Tax Department, the money seized is accounted for and was withdrawn from the said account of the BJP party. Therefore, the seized amount be deposited directly to the Bank Account number 1063002100013076 of Bharatiya Janta Party of Punjab National Bank, College Street Branch, Kolkata-700 073 on furnishing detailed panchnama and by taking photographs of seized articles and on proper security.

With the said observations and directions the revisional application being CRR 379 of 2021 together with CRAN No.1 of 2021 are decided and disposed of.

All parties shall act in terms of copy of this order downloaded from the official website of this Court.

(Shivakant Prasad, J.)