24.09.2021
Sl. No.12

Court No.8
BM

CRR 382 of 2021
+
IA. No.:CRAN 1/2021

Kaushik Nath
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

The petitioner has assailed the order dated 06.02.2020 passed by learned CMM, Kolkata in connection with Hare Street Police Station Case No.05/2019 dated 05.05.2019 under Section 379 IPC whereby and whereunder an application filed on behalf of the petitioner under the provision of Section 451 of the Code of Criminal Procedure for return of the seized sum of Rs.30 lacs in connection with the said case was rejected.

In the said case, the petitioner was arraigned as an accused alleging that on 05.05.2019 the Officers of the Hare Street Police Station apprehended the petitioner on the source information and recovered the said sum of Rs.30 lacs from his possession. Petitioner claim to be the treasurer of 35 number Zila Parishad of a political party and is an active party worker. The case of the petitioner is that being the party worker he was carrying the said sum as per verbal instruction of one Mr. Sanwar Dhanania, a political supervisor and State treasurer from the party office at Agarwal House ST. Georges Gate Road, 8th floor, Kolkata to State party office at No. 6, Murlidhar Sen Lane, Kolkata.

The grounds in this revisional application is that the learned Magistrate acted illegally and with material irregularity by rejecting the application for return of the seized cash to the petitioner and thereby committed a serious error inasmuch as the learned Court failed to consider that the seized cash belong to Bharatiya Janata Party and the petitioner was authorized to collect the same.

The Deputy Director of Income Tax (Investigation) filed an application before the learned Magistrate on 31.05.2019 for custody of the seized cash in the interest of investigation. In terms of no objection of the investigating agency, the learned Magistrate directed the investigating officer to transfer the custody of the seized cash to the Income Tax Department vide its order dated 09.07.2019.

In the proceeding conducted by the Income Tax Department, the petitioner was examined to ascertain the legal character of the money seized, which he was carrying on behalf of the party. The opposite party no. 2 submitted report that the money seized was accounted for and belonged to BJP. Yet, the prayer so made on behalf of the petitioner for return of the amount was rejected by the learned Magistrate, Calcutta.

It was observed that petitioner had evaded in filing any copy of the proceeding held by the Income Tax Authority, in respect of seized cash. The petitioner had disclosed in paragraph 7 of the application for return of the money that the report of the Income Tax Department is a conclusive proof of the ownership of the seized money yet all that he had filed was a copy of representation dated 15.10.2019 submitted before the Income Tax Authority by the said political party.

In this revisional application the petitioner has sought for stay of the proceeding in connection with Hare Street Police Station case No.05/19 dated 05.05.2019 pending in the Court of learned CMM, Kolkata.

Mr. Trivedi, learned advocate for the opposite party no.2, Income Tax Department filed an affidavit enclosing the report in connection with the case under reference in compliance with this Court's order dated 06.08.2021. It is reflected from the said report that during investigation by the Income Tax authority, the cash under seizure was withdrawn from the Bank account of Punjab National Bank on 04.05.2019 and on enquiry from the cash book of the BJP, West Bengal Unit it was clearly seen that the said cash of Rs.30 lacs was credited on 04.05.2019 consequently the claim of the BJP, West Bengal Unit appears to be substantiated with supporting document.

On perusal of the order impugned and upon hearing learned advocate for the State-opposite party and so also the opposite party no. 2, it would appear that the learned Magistrate rightly rejected application of the petitioner for return of the seized cash to him.

However, this Court finds on investigation in connection with the proceeding under Section 131 of the Income Tax Act, by the Income Tax Department, that the cash was withdrawn from the account of the BJP, West Bengal Unit and the same has been accounted for on verification of the Bank's statement, cash book.

In case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in *AIR 2003 SC 638* guidelines has been provided in the matter of return of the seized articles/cash.

It would be profitable to reproduce the observation in paragraph 4 of the cited judgment thus—

> *"4. The object and scheme of the various provisions* ***of the Code*** *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* ***of the Code*** *is that the articles concerned must be produced before the Court or should be in its custody. The object* ***of the Code*** *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.

Therefore, the seized articles being the cash of Rs.30 lacs be deposited to the account of the BJP, West Bengal Unit after detailed panchnama and by taking photographs of such articles and on proper security.

With the above observations and directions the revisional application being CRR 382 of 2021 together with CRAN No.1 of 2021 are disposed of.

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

(Shivakant Prasad, J.)