16.12.2022

Court No.35
Item No. 12

D.Hira

CRR 2610 of 2016

Nantu Krishna Bardhan
Vs.
The State of West Bengal

Mr. Debabrata Ray,
Mr. Sudip Sarkar,
Mr. Soumik Mondal.

... for the petitioner

Mr. Surajit Basu,
Ms. Pallabi Mondal.

... for the OP

Ms. Anasuya Sinha,
Ms. Subasree Patel.

... for the State

Affidavit-of-service filed in Court today is taken on record.

In this revision the petitioner has assailed the judgment and order of the Additional Sessions Judge, First Court at Barasat dated 29th February, 2016 passed in Criminal Revision No. 42 of 2015.

By dint of the said order the Court has modified the earlier order of the Additional Chief Judicial Magistrate at Bidhannagar dated 31st October, 2014 by issuing directions that the seized amount of money should be deposited in any nationalized Bank in a long-term deposit in the name of the Additional Chief Judicial Magistrate at Bidhannagar, after preparation of inventory and after keeping photo copies of the currency notes for further reference.

The present petitioner filed an application in the Court for return of the seized money, which he claims, belong to him.

As a matter of fact, his allegations in this case is of being deceived and cheated by the accused persons, who allegedly deceitfully has made the present petitioner/defacto complainant, to part with the said amount of money, on the false pretext of some other purpose.

Mr. Ray, learned Advocate for the petitioner has drawn attention of this Court to a report of Investigating Officer dated 19th September, 2014 and pointed out specifically to the following portion thereof, to submit that the source of money has very specifically been revealed during investigation in this case.

The relevant portion would be as follows:-

" In C/W the reference and subject as noted above I beg to state that on 07.09.13 at about 16.15 hrs one Nantu Krishna Bardhan S/o Jiban Krishna Bardhan of 84 Basdroni, New Govt. Colony, Kol-70 lodge a written complaint that as per Anandabazar Patrika Publication the complt. contacted over phone with one Abhijit Ganguly from their three mobile phones in c/w admission of his daughter Prarthita Bardhan in National Medical Collage. After the said conversation over phone he visited their office Career Fortune at AG-32, Sec-II, Saltlake, Kol-91 after the final negotiation of the amount for admission of his daughter in national Medical Collage the said Abhijit Ganguly came to the complt. house on 16.07.13 and received by cash Rs.-1,00,000/- (one Lac), part money out of Rs. 25,00,000/- (Twenty Five Lacs). Again on 02.08.13 another person name as Irshad Ahmad along with said Abhijit Ganguly came to his residence and has again received Rs.6,50,000/- (Six Lac Fifty Thousand) by way of Account pay Cheque vide no. 640478 dt. 02.08.13 drawn on SBI Naktala Branch lastly on 08.08.13 upon several request of Abhijit Ganguly and Irshad Ahmad the complt. has made a payment Rs.11,50,000/- (Eleven Lacs Fifty Thousand) from SBI, by way of RTGS from his account being no. 11005376681 through cheque no. 760481 in the name of Career Fortune of IFS code of ICIC0801280 in their Bank i,e, ICIC Bank, Branch- Baranagar, being account no. 128005500135, which was transferred in the account of Career Fortune. Accordingly the case has been registered FIR will speak for itself."

He has also relied on the judgment of the Hon'ble Apex Court ***Sunderbhai Ambalal Desai vs. State of Gujarat*** reported in ***(2002) 10 Supreme Court Cases 283*** to submit that Hon'ble Supreme Court has directed in a case of cheating and deception and unlawful procurement of article from the ownership and custody of the defacto complainant by the accused person, for return of the said article during pendency of the investigation/trial by exercise of provisions of under Section 451 of the Code of Criminal Procedure. The relevant portion of the judgment has been relied on.

He has submitted that the amount of money as seized and now deposited in the Nationalized Bank may be directed to be returned back to the petitioner.

Ms. Sinha, learned Advocate for the State has submitted a report today in Court which reveals that in this case police has seized a total amount of Rs.11 lakhs and the said seized money is lying in the Bidhannagar Treasury Account (NPG A/C Code 84430010500107 under A/C head- 11334494498) at State Bank of India, GOC Branch, Bikash Bhawan.

She further submitted that any order as prayed for by the petitioner, if passed by this Court, may be equipped with necessary direction for timely refund of the same, if required.

Section 451 of the Code of Criminal Procedure, is the enabling provision by exercise of which, a Court can order for custody or disposal of property, produced in Court during an enquiry or trial, pending the same. For this, judicious application of mind by the Court and expeditions steps would be necessary. However, the Court should possess records describing the nature of the property, in detail, before issuing such an order.

In the judgment of Hon'ble Supreme Court, referred to by the petitioner, the Hon'ble Court was dealing with a question of return of seized article and Court's powers under Section 451 of the Code of Criminal Procedure. The following may be noted:-

"5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same."

The Court opined that:-

"12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or decoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition."

In the impugned judgment dated 29th February, 2016 the Sessions Judge has disposed of petitioner's prayer under Section 451 of the Code of Criminal Procedure and concluded that in this case and at this stage, the Court was not in a position to reach to any conclusion as to whom the seized amount of money belonged.

It came to a conclusion further that only after trial the ownership of the money could be ascertained. On this ground, the Court has declined petitioner's prayer for return of the amount. Further directions were made for depositing the said amount of money in the Nationalized Bank though it appears that at present the same is deposited with the Government Treasury.

Be that as it may, pursuant to the settled law on the point and particularly observing the ratio decided in the judgment as referred above, it is found that in case the revision Court is satisfied about that there is no possibility for misuse of the money seized in connection with the case, it can direct with certain circumspection for return of the seized money.

In this case upon perusal fo the report of the Investigating Officer dated 19th September, 2014 it is very much clear that the money was transacted through bank transfer from the account of the defacto complainant/petitioner to the accused persons. This appears to be sufficient material to prima facie conclude that the money as seized in this case belong to the petitioner.

The fact as above has prompted this Court to find in this case following the dictum of the Hon'ble Apex Court in this respect, that an order for release of the said money towards the petitioner can be made, of course, with certain measures for safeguard, so that the same does not jeopardize a fair trial in this case.

Under such circumstances the impugned order is varied and this revision is allowed with the directions as narrated below.

The seized amount of Rs.11 lakhs now lying in the Bidhannagar Treasury Account (NPG A/C Code 84430010500107 under A/C head-11334494498) at State Bank of India, GOC Branch, Bikash Bhawan shall be withdrawn by the petitioner after obtaining permission from the concerned Court with this regard.

It would be unnecessary to mention that such permission shall only be formal in nature, for information of the Trial Court and compliance with the further directions of this Court, as mentioned below:-

(i) While withdrawing the said amount of money seized in connection with the present case the petitioner shall furnish a bank guarantee of the equal amount in the Court.

(ii) The petitioner shall also furnish an undertaking that the said amount of money shall be produced by him in the Court as and when called for during the trial of the case.

It is taken note of that inventory of the seized alamat has already been directed to be prepared vide the impugned order and also photocopies of the currency notes were to be prepared. Hopefully the said exercise has already been completed.

The Trial Court is requested to make all possible endeavour to expedite the trial of the case.

With the directions as above, this revision is allowed.

Accordingly, CRR no. 2610 of 2016 is disposed of.

All pending applications, if any, are consequently disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)