BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.07.2022

PRONOUNCED ON : 30.09.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.R.C.(MD)No.285 of 2022
and
Crl.M.P.(MD)No.3730 of 2022

Meenakshi : Petitioner/Petitioner/3rd Party

Vs.

The State represented by
The Inspector of Police,
Vigilance and Anti Corruption Wing,
Madurai.
(In Crime No.7 of 2019) : Respondent/Respondent/Complainant

PRAYER : Criminal Revision Case has been filed under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order dated 09.07.2019 made in Cr.M.P.No.400 of 2019, on the file of the Special Court for Prevention of Corruption Act cases, Madurai and set aside the same as illegal.

For Petitioner : Mr.R.Gandhi

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 400 of 2019, dated 09.07.2019, on the file of the Special Court for trial of Prevention of Corruption Act cases, Madurai, dismissing the petition filed under Section 451 Cr.P.C., for interim custody of the money.

2. The revision petitioner is a third party. The respondent registered a case in Cr.No.7 of 2019, dated 06.03.2019 under Section 102 Cr.P.C., and under Section 7 of Prevention of Corruption Act 1988, as amended by the Amendment Act 2018, against the accused Elaiyaraja - the first accused in the above case. The case of the prosecution is that on receipt of credible information, a joint surprise check was conducted on 05.03.2019 at the office of the Sanitary Inspector, Ward Nos.43, 44 and 28, Zone-2, Madurai Corporation by the District Inspection Cell Officer, Madurai along with the officials of Vigilance and Anti-Corruption, Madurai and seized unaccounted amount of Rs.61,000/- and on that basis, F.I.R., came to be registered in Cr.No.7 of 2019 against Thiru.A.Elaiyaraja, Sanitary Inspector, Madurai Corporation. It is the further case of the prosecution that during the course of the investigation, search warrant was obtained on 28.03.2019 from the Special Court to search the safety locker, which was operated jointly in the name of the accused Elaiyaraja and his wife Mahalakshmi

in Corporation Bank, Madurai, that during the search made on 29.03.2019, the accused had produced three cloth bags, in which currency notes of Rs. 26,96,500/- were found, that since the accused has not offered any explanation for the said amount, the same was seized and was produced before the Special Court and that the same was ordered to be received and remanded in RPR No.7 of 2019, dated 04.04.2019. Subsequently the Vigilance and Anti-Corruption Wing, Madurai has registered another case in Cr.No.20 of 2019, under Section 109 I.P.C., r/w 13(2) r/w 13(1)(b) of Prevention of Corruption Act for the allegation of accumulation of wealth disproportionate to his known sources of income.

3. Admittedly, the present petitioner/third party is the mother-in-law of the accused Elaiyaraja.

4. The petitioner has filed a petition under Section 451 r/w 457 Cr.P.C., seeking orders to entrust the interim custody of the money seized in the locker maintained by the accused Elaiyaraja in SML90AOIU in Corporation Bank, Madurai in connection with the case registered in Cr.No.7 of 2019. The petitioner's case is that the petitioner and her sister Pandiammal had purchased properties in Madurai on 08.03.1976, that the property had been in possession and enjoyment of the petitioner, that due to her age and illness, she decided to

dispose of the property and disburse the sale amount among her legal heirs, that on 05.01.2018, the petitioner and her sister Pandiyammal sold the said property to one John Rajasekar for Rs.42,00,000/- and the same was registered before the Sub-Registrar of Thallakulam, that the petitioner has received Rs.21,00,000/- towards her share of sale amount, that there existed some misunderstanding between the legal heirs of the petitioner in sharing the amounts, that the petitioner had handed over the said sale amount to the custody of her son-in-law and she had instructed her son-in-law that the amount shall be disbursed after amicable settlement entered between her legal heirs, that the petitioner came to know that the said amount of Rs.26,96,500/- seized by the respondent belongs to her and the same is in no way connected with the income of her son-in-law, that the petitioner is deprived of using money for the purpose of welfare of her family due to the seizure of money, that there is no rival claim in the above case and that therefore, the petitioner is constrained to file the above application seeking interim custody of money.

5. The respondent has filed a counter statement raising serious objections for the interim custody of money and further stated that on 29.03.2019, during search, the locker was opened and found three cloth bags containing Rs.26,96,500/-, that when the accused was questioned, he did not give any satisfactory explanation for the said amount, that the said amount was seized and

later it was produced before the Special Court, that the copy of the account statement obtained in the name of the petitioner from the Canara Bank, Iyer Bungalow, Madurai City would reveal that the petitioner had deposited the amount of Rs.21,00,000/- on 08.01.2018, that thereafter the amount have been disbursed to her two sons and to some other persons on various dates between 09.01.2018 and 30.01.2018, that the closing balance of the said account as on 31.01.2018 was zero, that the petitioner after withdrawing the entire amount, disbursed to her younger and elder sons and to some other persons from her account on various dates and that the petitioner, in order to protect the interest of her son-in-law and in order to escape from the clutches of law, has created a new story, which has no substance. The learned Special Judge, after conducting enquiry, has passed the impugned order dated 09.07.2019, dismissing the petition filed under Section 451 Cr.P.C. Aggrieved by the said dismissal order, the third party has come forward with the present Criminal Revision Case.

6. The main contention of the petitioner is that after getting the sale amount of Rs.21,00,000/- she had entrusted the same to her son-in-law – the accused herein for placing in the bank locker for safety, that the respondent police during their search, has recovered the said amount of Rs.26,96,500/-, that the petitioner's son-in-law had categorically explained about the amount seized and that since the amount was belonging to her, she was forced to file the above petition.

7. As already pointed out, the respondent police has specifically disputed the ownership of the amount alleged by the petitioner. As already pointed out, the petitioner had entrusted Rs.26,96,500/-, which includes the sale amount of Rs.21,00,000/- with the accused for safe custody. But the respondent has taken a stand that the petitioner had deposited Rs.21,00,000/- on 08.01.2018, but there was bank balance to the tune of Rs.1609/- as on 07.01.2018, that the petitioner had disbursed the amounts to her elder and younger sons and to some other persons and after handing over such amounts, the closing balance of her account as on 30.01.2018 is zero, that the amount claimed by the petitioner was not given to the accused for keeping the same in the safety locker and that the petitioner with sole intention to save her son-in-law, she has come forward with the above petition and revision.

8. As rightly pointed out by the learned Additional Public Prosecutor, the respondent police has produced the bank statement to show that the petitioner, after the deposit of Rs.21,00,000/-, had disbursed the amounts to her sons and other. As rightly contended by the learned Additional Public Prosecutor, there is absolutely no evidence or materials to show that the cash amount now in dispute is belonging to her.

9. No doubt, the learned Counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in ***Sundarbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002)10 SCC 287*** and the decisions of this Court in ***Mukesh Jain Vs. State by Sub-Inspector of Police, Kumaran Nagar Police Station, Chennai*** (Crl.O.P.No.19427 of 2016, dated 30.08.2016) and ***Ayyasamy Vs. State represented by the Inspector of Police, Vadapalani Police Station, Chennai*** (Criminal Revision No.460 of 2017, dated 17.03.2017). In ***Sundarbhai Ambalal Desai's case***, the Hon'ble Supreme Court, while explaining the scope of Section 451 Cr.P.C., has formulated the guidelines to be followed with regard to return of valuable articles and currency notes. In ***Mukesh Jain's case***, a learned Judge of this Court has allowed the petition and ordered to return the cash seized to the victim of crime and thereby deleted the condition that the petitioner therein should keep the cash intact and produce the same before the trial Court. In ***Ayyasamy's case***, the police had recovered 42kgs of banned tobacco products along with a cellphone and cash of Rs.13,13,480/- from the petitioner and this Court by observing that the petitioner therein was a whole seller and the amount was seized from the shop and no useful purpose would be served by keeping the money in the Court, allowed the revision.

10. As rightly observed by the Special Court, the above decisions have no application to the case on hand. Moreover, it is not the case of the accused that

the cash seized belongs to him, but on the other hand, the accused's mother-in-law has been claiming ownership over the said amount. As already pointed out, the respondent has shown prima facie proof that the petitioner had already disbursed the sale amount to her sons and to others. But in the revision petitioner has taken a new stand that her two sons in collusion with her grandson Ganesh Babu had taken away the entire amount of Rs.21,00,000/- clandestinely from her bank account and that when the same was questioned and due to the relentless pressure, they have returned the entire amount of Rs.21,00,000/- to the petitioner and that the petitioner had then entrusted the said amount with her son-in-law – the accused.

11. As rightly pointed out by the learned Additional Public Prosecutor, the above stand was not at all canvassed in the application filed under Section 451 Cr.P.c., before the trial Court. As rightly pointed out by the learned Additional Public Prosecutor, after coming to know about the stand taken by the respondent and also the decision of the Special Court, the petitioner has improved her case. On considering the entire facts and circumstances, as rightly contended by the learned Additional Public Prosecutor, it is clear that the petitioner has come forward with the above petition under Section 451 Cr.P.C., with sole intention to save her son-in-law and if her case is accepted, that would destroy the case of the prosecution against the accused.

12. More importantly, the amount now in dispute has been recovered from the bank locker jointly owned by the accused Elaiyaraja and his wife. Whether the money now recovered from the bank locker is a tainted money or not can only be decided at the trial. As already pointed out, since the petitioner has not shown prima facie proof that the amount in dispute is belonging to her, the decision of the trial Court in dismissing the petition filed under Section 451 Cr.P.C., cannot be found fault with. Hence, this Court concludes that the Criminal Revision Case is absolutely devoid of merits and the same is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

30.09.2022

Index : Yes/No
Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Special Court for Prevention of Corruption Act cases,
   Madurai.

2. The Inspector of Police,
   Vigilance and Anti Corruption Wing,
   Madurai.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

Crl.R.C.(MD)No.285 of 2022

30.09.2022