IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.6.2023

Delivered on : 31.7.2023

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.5957 of 2023
in
Criminal Appeal No.1311 of 2022

M/s.MIOT Hospital & Educational Trust,
being represented by Mr.Hariharan.R
its Authorised Signatory,
Office at 4/112, Mount-Poonamallee Road,
Manapakkam, Chennai 600 089. Petitioner

vs.

1. Mr.Paramasivan

2. The Central Bureau of Investigation,
being rep. by Investigation Officer,
Inspector of Police, Anti Corruption
Branch, Shastri Bhavan,
Nungambakkam,
Chennai 600 006.
(Crime No.RC MA1 2014A 0015) Respondents

Criminal Miscellaneous Petition filed under Section 482 Cr.P.C. for return a sum of Rs.5,00,000/- (Rupees five lakhs only) the seized trap money (which is old Rs.1000/- denomination) and also Samsung Duos mobile phone bearing IMEI No.35116/06/401681/7 belonging to the petitioner.

For Petitioner : Mr.S.P.Siva Padosh

For R1 : Mr.T.Sivananthan

For R2 : Mr.K.Srinivasan,
Special Public Prosecutor assisted by
Ms.G.Virindha Ramesh

ORDER

De facto complainant in C.C.No.9 of 2015 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai is the petitioner in the present Miscellaneous Petition seeking return of seized trap money and the mobile phone connected with the said Calendar Case.

2. Facts, in brief, behind the present petition are as under:-

i) The petitioner herein viz., MIOT Medical and Educational Trust is running a Nursing College in the name and style of MIOT School of Nursing and MIOT College of Nursing at Manapakkam in Chennai under the control of Indian Nursing Council at New Delhi (INC).

ii) The first respondent herein (A1) is the Director (Audit), AMG-II in the Office of Director General of Audit, Central Expenditure (Audit) at New Delhi. The first respondent herein/A1 colluded with the Assistant Audit Officer (A3) in the office of Director General of Audit, Central Expenditure (Audit) at New Delhi to make a demand of illegal gratification from MIOT under the guise of auditing through INC.

iii) Accordingly, A1 and A3 sent notice to MIOT calling for production of 37 unconnected and irrelevant documents and accordingly, on 9.4.2014, when steps were taken by the prosecution witnesses viz., liaison officer and other staff of MIOT for rectifying the defects pointed out by the accused by offering explanation to A3, they were informed that A1 is the deciding authority on the issue.

iv) Thereupon, when A1 was approached, he demanded bribe of thirty five lakhs to sort out the issue of audit by threatening that otherwise, the name and reputation of MIOT would be damaged under the pretext of levying heavy penalty. Mobile Numbers were exchanged. Then, A1 directed PW2 to hand over rupees five lakhs to his brother-in-law, who figures as A2 in the criminal proceedings, as initial bribe amount.

v) On such demand, the MIOT lodged a complaint with CBI, ACB, Chennai on 21.4.2014. Thereupon, a trap was laid and the accused were arrested. During such course of action, the trap money of Rs.5,00,000/- and the mobile phone of PW2 were seized.

vi) After the trial, judgment of conviction and sentence was delivered by the Special Court on 14.12.2022. With regard to the trap money and the mobile phone seized from PW2, the Special Court had ordered the same to be returned to the management of MIOT Medical and Educational Trust after the appeal or appeal time is over.

vii) Challenging the conviction and sentence, the first respondent herein, who is A1 in the Calendar Case has preferred Criminal Appeal No.1313 of 2022.

viii) In the Criminal Appeal, the present Miscellaneous Petition has been filed by the de facto complainant seeking return of the trap money and the mobile phone seized from their staff.

3. Placing reliance on the decision of the Punjab and Haryana High Court in ***Manpreet Singh vs. Central Bureau of Investigation and another*** (CRA S-743-SB of 2012 dated 1.3.2013) learned counsel for the appellant would submit that the money belonging to the de facto complainant used for trap cannot be allowed to be detained for uncertain period and once the trial is concluded, it is required to be returned to the de facto complainant and in the present case, the trap money had been seized by the authorities in the year 2014 itself and as of now, nine years had lapsed, the trial was concluded, judgment of

conviction and sentence was rendered and even Criminal Appeal has been filed by A1. He would further submit that the petitioner is a Trust carrying out charitable activities and to fulfil the objectives of the Trust, they are in need of the said money at once and considering the demonitization that had taken place after the seizure of the money, particularly in view of the denomination of the trap money, it needs to be exchanged at the earliest in order to protect its value pursuant to the Notification dated 12th May 2017 issued by the Ministry of Finance. In this regard, he would rely on the decision of he Bombay High Court in ***Kishor Ramesh Sohoni vs. Union of India and others*** (2022) SCC OnLine Bombay 629.

4. Mr.K.Srinivasan, learned Special Public Prosecutor appearing for the respondent-CBI would submit that the money sought to be returned was a trap money and the Trial Court, after conclusion of trial, had found the first respondent herein guilty and convicted him. He would further submit that the respondent-CBI has no objection in returning the currency notes subject to the conditions viz., marking of serial numbers of the currency notes and substituting the same with colour xerox. However, he would submit that the Mobile Phone sought

to be returned being an electronic device, it may be required for the purpose of the case and thus, return of the same right now is not warranted.

5. Heard the learned counsel appearing for the petitioner/de facto complainant, the learned counsel appearing for the first respondent/appellant, the learned Special Public Prosecutor for CBI Cases appearing for the second respondent and perused the materials available on record.

6. There is no serious objection from the appellant/first respondent herein for returning the trap money to the petitioner/de facto complainant.

7. As rightly pointed out by the learned counsel appearing for the petitioner, almost a decade is completed from the date of seizure of the trap money, the accused had been convicted and sentenced for the offences they were charged, a Criminal Appeal has also been filed and thereby, there cannot be any useful purpose in keeping the trap money in further custody. The petitioner, being de facto complainant,

is entitled to get return of the trap money, which was seized at the relevant point of time and he cannot be made to suffer for no fault on his part by retention of his money without any justifiable cause.

8. In this regard, the relevant portion of the decision rendered by the Punjab and Haryana High Court in ***Manpreet Singh vs. Central Bureau of Investigation and another*** (CRA S-743-SB of 2012 dated 1.3.2013) is reproduced hereunder for ready reference:-

> *"When trial in a criminal court is concluded, the court is required to make such an order as it thinks fit for disposal/ delivery of the property. In the case in hand property in question was provided by the appellant-complainant which was used in trap. There is no dispute regarding ownership and title over the trap money. Rather investigation agency has specifically stated the property lying in the CBI Malkhana may be returned to the complainant. Convict respondent no.2 does not claim that money. The money given by the complainant cannot be allowed to be detained for uncertain period. Once the trial is concluded it is*

required to be returned to the complainant.

In view of the above, I am of the opinion that the trap money is lying without any reason in the CBI Malkhana since 17.1.2008 and is not getting any interest. Complainant cannot be punished by retaining his money without any justified cause. Since during trial money was produced, respondent no.2 cannot raise objection to the release of the money on the ground that it may be required for production as case property during appeal, as the coloured photocopies of the currency notes are to be retained which will be treated as case property and no prejudice will be caused to any party. The same is ordered to be returned to the appellant- complainant in accordance with law. However, the CBI will retain the colour photostat copies of the currency notes in question from both sides. The learned counsel appellant states that he will bear the expenses for colour photostat. After doing the needful the CBI is directed to return the amount to the appellant-

complainant."

9. The present case stands on a better footing. When it is viewed by the Punjab and Haryana High Court that when trial in a criminal court is concluded, the court is required to make such an order as it thinks fit for disposal/delivery of the property, in the case on hand, not only trial has been concluded, but, conviction has been rendered and an Appeal has been filed thereon and therefore, there cannot be any impediment in ordering for return of the trap money.

10. It is also brought to the notice of this court that the trap money was seized on 21.4.2014 and thereafter, at the fag end of 2016, demonetization was implemented in India with immediate effect giving a very limited period for exchanging the demonetized currency with the Banks, however, since the currency notes in the case on hand were the material objects of the case, the petitioner could not avail such a benefit and in such a similar situation, the Bombay High Court in ***Kishor Ramesh Sohoni vs. Union of India and others*** (2022) SCC OnLine Bombay 629, referring to the contents of the Notification dated 12th May 2017 issued by the Ministry of Finance, has observed

as under:-

> "***7.*** *Ms.Phatak, learned Advocate for the RBI, states her case with admirable brevity. She reiterates what is stated in this Affidavit and them invites our attention to the Ministry of Finance notification of 12th May 2017 which we find at pages 45 to 47. Clause 2 of this notification reads thus:*
>
> > *2. Deposit of confiscated specified bank notes - Where specified bank notes have been confiscated or seized by a law enforcement agencies or produced before a court on or before the 30th day of December 2016, such specified bank notes may be tendered, at any office of the Reserve Bank specified under sub-section (1) of section 4 of the Act or a nationalised bank designated by the Reserve Bank for the said purpose, for deposit in a bank account or exchange of the value thereof with legal tender, subject to the following conditions, namely:—*
> >
> > *(a) in case confiscated specified bank notes are*

returned by the court to a person who is a party in case pending before that court, then, the person shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes, the serial numbers of which -

(i) have been noted by the law enforcement agency which confiscated or produced them before the court and

(ii) are mentioned in the direction of the court.

(b) in case specified bank notes are forfeited in favour of the Central Government or the State Government by an order of the court, then, that Government shall be entitled, on production of the direction of the court, to deposit or exchange such specified bank notes; or

(c) in case specified bank notes are placed in custody of any other person by an order of the court on or before the 30th day of December, 2016, then, the person shall be entitled, on production of the direction of the court, to

deposit or exchange such specified bank notes, the serial numbers of which -

(i) have been noted by the law enforcement agency which confiscated or produced them before the court; and

(ii) are mentioned in the direction of the court."

....

***9.** We exercise our equitable discretionary jurisdiction under Article 226 of the Constitution of India to direct the RBI by this order to replace the currency tendered by the Petitioner with current valid tender, subject to the Petitioner complying with other requirements such as mentioning serial numbers etc. Those particulars are set out in 12th May 2017 notification and in paragraphs 10 and 11 in RBI's Affidavit."*

11. In view of the ratio laid down in the decision cited supra, this court feels it appropriate to dispose the present petition with the following directions:-

i) The Principal Special Judge for CBI Cases, VIII Additional City

Civil Court, Chennai shall ensure that the trap money which is in the court custody is enlisted and such list is kept as part of record.

ii) Colour photostat copies of the currency notes (both sides) shall be made by the said court at the cost to be borne by the petitioner and the same also shall be kept as part of record.

iii) Thereupon, the said court shall return the trap money to the petitioner alongwith the list of such currency notes.

iv) On getting return of the trap money, the petitioner is permitted to approach the Reserve Bank of India with a copy of this order and a copy of the list to be provided by the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and tender the currency notes seeking replacement of the same and in such event, the Reserve Bank of India shall exchange/replace such currency notes tendered with current ones.

31.7.2023.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai 600 104.

2. The Central Bureau of Investigation,
   being rep. by Investigation Officer,
   Inspector of Police, Anti Corruption
   Branch, Shastri Bhavan,
   Nungambakkam,
   Chennai 600 006.

3. The Registrar,
   City Civil Court,
   Chennai.

4. The Special Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. ORDER IN
Crl.M.P.No.5957 of 2023 in
Crl.A.No.1311 of 2022

Delivered on
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