IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-21400-2023
Date of Decision: 20.07.2023

Amarjit Singh

. . . . Petitioner

Vs.

State of Punjab

. . . . Respondent

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Monty Goyal, Advocate, for the petitioner.

Mr. Parneet Singh Pandher, AAG, Punjab.

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DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to set aside order dated 03.03.2023 (Annexure P4) passed by learned JMIC, Ludhiana and to order the release of ₹13,80,000/- in favour of the petitioner in view of the order dated 16.02.2023 passed by this Court in CRM-M-28713-2017 (Annexure P3)

2. In CRM-M-28713-2017, this Court had passed the following order on 16.02.2023: -

> *"Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of impugned order dated 22.05.2017 (Annexure P-4) passed by Learned Judicial Magistrate First Class, Ludhiana whereby application for release of the case property has been declined.*
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> *It is revealed that in a trial arising out of FIR No.83 dated 31.08.2014 registered at Police Station Dugri, District Ludhiana under Sections 420 & 120-B of the IPC and Section 13-A of Public Gambling Act, 9 accused including petitioner Amarjit Singh were tried.*

Learned Judicial Magistrate 1st Class, Ludhiana vide his judgment dated 26.03.2015 convicted petitioner Amarjit Singh besides Sandeep Kumar @ Sonu and Jagdish Singh @ Bittu under Section 13-A of the Public Gambling Act. They were sentenced separately. In the appeal filed by the appellant, acquittal was recorded by Learned Additional Sessions Judge, Ludhiana vide judgment dated 23.12.2016 (Annexure P-2) and it was clearly directed that case property except the currency notes be confiscated to the State. It was directed that currency notes were to be dealt with as per law after the lapse of period of appeal and revision, if any. It is conceded fact that respondent – State did not file any revision against the judgment of acquittal as recorded by Learned Sessions Judge, Ludhiana.

During investigation an amount of ₹13,80,000/- has been recovered from the petitioner Amarjit Singh whereas ₹8,000/- from Sandeep Kumar and ₹5,000/- Jagdish Singh @ Bittu were recovered.

After the judgment of acquittal in his favour, petitioner applied for release of the amount of ₹13,80,000/- but Learned Judicial Magistrate 1st Class vide impugned order dated 22.05.2017 declined the application on the ground that applicant could not show the amount belonging to him.

In the considered opinion of this Court the impugned order is quite illegal and perverse. It was the own case of the prosecution that amount of ₹13,80,000/- had been recovered from the possession of the petitioner which had been taken into possession during investigation.

Therefore, the impugned order is hereby set aside. An amount of ₹13,80,000/- is directed to released to the petitioner with immediate effect.

Petition allowed accordingly."

3. It is contended by learned counsel that after passing of the aforesaid order, petitioner moved an application before Ld. JMIC, Ludhiana to release the amount of ₹13,80,000/- in the form of new currency notes,

but Ld. Magistrate passed a partial order, without giving any direction for releasing the new currency notes, to the SHO Police Station Dugri, District Ludhiana. It is further contended that petitioner came to know that his currency notes of ₹13,80,000/- are still in the form of old currency notes, as the concerned Investigating Officer/SHO did not deposit the old currency notes in any bank or in treasury, in view of the notification of the Government of India for demonetization.

4. Ld. Counsel has also drawn attention towards the fact that petitioner had already moved an application to Ld. JMIC, Ludhiana to direct the SHO to deposit the recovered amount in the treasury office and Ld. Magistrate had passed the order dated 22.05.2017 as per which stand was taken by the police that it was awaiting the order of the Commissioner of Police to get the currency deposited. It is despite the fact that Court had already passed an order dated 03.01.2017 directing the police to deposit the old currency notes in the treasury.

5. In short reply filed on behalf of the respondents/State, it is stated that pursuant to the order passed by Ld. JMIC, Ludhiana, inventory of the confiscated currency notes along with the serial number of the said notes was prepared. It is stated further that Government of India vide notification dated 12.05.2017 has formulated **Specified Bank Notes (deposit of confiscated notes) Rules, 2017 [for short 'the Rules']** as per which where specified notes have been confiscated or seized by Law Enforcement agencies, such specified bank notes may be tendered at any office of the Reserve Bank or a Nationalized bank designated by the Reserved Bank for the said purpose, for deposit in the bank account or exchange of the value thereof with legal tender.

6. Ld. State counsel contends that the exchange as per the aforesaid Rules can take place on the direction by the competent Court and accordingly, Ld. JMIC, Ludhiana rightly passed impugned order dated 03.03.2023.

7. I have heard considered submissions of both the sides and have perused the record.

8. Specified Bank Notes (deposit of confiscated notes) Rules, 2017 were notified by the Ministry of Finance, Government of India on 12.05.2017 in exercise of its power conferred by sub-Section (1) of Section 11 read with Clause (c) of the proviso to Section 5 of the Specified Bank Notes (Cessation of Liabilities Act), 2017 [for short 'the Act'].

9. Rules 2 & 3 of the Rules are relevant, which read as under: -

> ***"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:-*
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> *(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-*
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> *(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*
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> *(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-*
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> *(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.*
>
> ***3. These rules not to apply in certain cases.-*** *These rules shall not apply to specified bank notes confiscated or seized after the 30th day of December, 2016."*

10. In the present case, the currency notes of ₹13,80,000/- were impounded on 31.08.2014 by the police i.e. prior to 30.12.2016 and as such Rules as reproduced above, are applicable to this case.

11. Learned State counsel submits that the Ld. JMIC, by way of impugned order dated 03.03.2023, passed in lieu of the order dated 16.02.2023 of this Court in CRM-M-28713-2017, has already given liberty to the petitioner to approach RBI for change of currency notes and said direction is in conformity with Sub Clause (a) of Rule 2 of the Rules.

12. There is no merit in the aforesaid contention. As rightly pointed out by learned counsel for the petitioner that during the pendency of

the case, the petitioner had moved an application before the learned JMIC, Ludhiana for directing the IO/SHO concerned to deposit the old currency notes in the treasury, since the same had been demonetized by the Central Government. Vide order dated 03.01.2017 (Annexure P-6), the Court of Ld. JMIC, Ludhiana had directed the SHO of the concerned police station to deposit the currency notes of the denomination of ₹500/- and ₹1000/- lying in the Malkhana of P.S. Dugri, Ludhiana in the Bank, by retaining the coloured photocopies of the demonetized currency notes and to obtain necessary certificate/receipt from the bank or from the authority in whose account the demonetized currency notes had been deposited, so that the amount could be disbursed to the right claimant in future.

13. As is apparent from the record, the aforesaid order dated 03.01.2017 of Ld. Magistrate was not complied by the SHO concerned. The petitioner again moved an application before the court of Ld. JMIC to give direction to the SHO, Police Station, Dugri, Ludhiana to deposit the recovered money in the treasury. As per the police report, referred in the order dated 22.05.2017 (Annexure P5) of the Ld. JMIC, the police was waiting for the order of the Commissioner of Police to get the currency notes deposited.

14. It is, thus, clear that despite the clear order of the Court dated 03.01.2017, the SHO of the concerned Police Station kept on waiting for the order of the Commissioner of Police, which was not at all required; and did not deposit old currency notes, which had been impounded in this case, in the treasury.

15. In the aforesaid circumstances, the direction given by Ld. Magistrate by way of the impugned order dated 03.03.2023 to the petitioner

to approach the RBI for change of currency notes, is not at all justified. Respondent-State is hereby directed to release the amount of ₹13,80,000/- in the form of trade-able currency notes i.e. new currency notes in favour of the petitioner within 15 days from the date of receipt of certified copy of this order without waiting for getting them changed from RBI or any other bank. Respondent/State will be at liberty to take appropriate action against the concerned SHO in failing in his duty in getting the old currency notes deposited in treasury well in time despite order of this Court.

16. This Petition is disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

20.07.2023
Vivek

1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*