

(2021) 03 KL CK 0201

In the High Court Of Kerala

Case No : Criminal Revision Petition No. 91 Of 2020

A. Rabia

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 18-03-2021

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 13(1)(b), 13(1)(e), 13(2), 18(A)
Code Of Criminal Procedure, 1973 — Section 397, 397(2), 401, 451

Citation : (2021) 03 KL CK 0201

Hon'ble Judges : R. Narayana Pisharadi, J

Bench : Single Bench

Advocate : K.P. Satheesan, P. Mohandas, S. Vibheeshanan, K. Sudhinkumar, S.K. Adhithyan, Sabu Pullan, Gokul D. Sudhakaran, A Rajesh

Final Decision : Dismissed

Judgement

1. The Vigilance and Anti-Corruption Bureau (VACB) conducted an enquiry against Mr.Hamsa, Deputy Superintendent of Police, District Crime Branch, Thrissur Rural on the allegation of amassment of assets disproportionate to his income. On the basis of the facts revealed during the enquiry, on 09.07.2019, a case was registered against him as VC.01/19/SCE by the VACB, Special Cell, Ernakulam under Sections 13(1)(b) and 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988.

2. On 11.07.2019, the Deputy Superintendent of Police, VACB, Special Cell, Ernakulam conducted search of the house of the accused (Mr.Hamsa). During the search, 135.800 grams of gold ornaments and currency notes to the tune of Rs.9,65,330/-which were found in the master bed room of the house, were seized by the officers of the VACB. Further, 33.616 grams of gold ornaments, which had been worn by the wife of the accused, were also seized.

3. The accused was not present in the house at the time of the search. The search was conducted in the presence of his wife and son. The entire gold ornaments seized by the VACB were released to the custody of Sajitha, the wife

of the accused, on kychit, at the spot itself.

4. The petitioner herein, a third party, filed an application under Section 451 of the Code of Criminal Procedure, 1973 (for short 'the Code') in the trial court for releasing Rs.3,50,000/- and ten sovereigns of gold ornaments, which were seized from the house of the accused, to her interim custody.

5. As per the order dated 21.11.2019, the trial court dismissed the aforesaid application.

6. The petitioner has filed this revision petition under Section 397 read with 401 of the Code, challenging the legality and propriety of the aforesaid order passed by the trial court.

7. Heard learned senior counsel who appeared for the petitioner and also the learned Public Prosecutor.

8. The revision petition is filed challenging the order passed by the trial court in an application filed under Section 451 of the Code. The order impugned is interlocutory in character. Therefore, the revision petition is not maintainable.

9. An order passed under Section 451 of the Code is not a final order. It is necessarily interlocutory in character (See Vasu v. Unnikrishnan : 1983 KLT 310). An order under Section 451 of the Code is only an interlocutory order and it is not subject to revision as enjoined by Section 397(2) of the Code. Even if the application under Section 451 of the Code is filed by a third party, the order passed by the Court disposing such application would be an interlocutory order. A revision will not lie against that order (See Yadav Agencies V. Philomina : 1985 KLT 560).

10. Learned senior counsel for the petitioner has made available a copy of the application filed by the petitioner before the trial court for perusal of this Court. As per the averments in the affidavit filed in support of that application, the petitioner had entrusted the amount of Rs.3,50,000/- and ten sovereigns of gold ornaments not with the accused but with Mohammed Raoof, the son of the accused, for safe custody.

11. However, Mohammed Raoof was not made a party to the application filed by the petitioner before the trial court for obtaining interim custody of the money and the gold ornaments. Since the plea of the petitioner is that she had entrusted the money and the gold ornaments with Mohammed Raoof, in order to have a just decision in the application, Mohammed Raoof should have been made a party to that application.

12. As noticed earlier, the entire gold ornaments seized from the house of the accused had been released to Sajitha, the wife of the accused, by the officers of the VACB. An order in favour of the petitioner in the application filed by her before the trial court would necessarily mean divestment of the gold ornaments entrusted with Sajitha by the VACB. If that be so, Sajitha should have also been

made a party to the application filed by the petitioner.

13. The petitioner had impleaded the accused in the case as the second respondent in the application filed by her before the trial court. However, a perusal of the order of the trial court would show that, no notice on the application was given to the accused and he was not heard before disposing of that application. Of course, since the petition was dismissed, it has not caused any prejudice to the accused. However, since it was from the possession of the accused that the gold ornaments and the money were seized, it is only proper that the court shall hear him also before taking any decision in an application filed for interim custody of the properties.

14. On a perusal of the affidavit filed in support of the application filed by the petitioner before the trial court, it is seen that she had produced some estimates and invoices to prove the purchase of gold ornaments. However, the affidavit filed by the petitioner in support of the application does not indicate which estimate or invoice relates to which item of gold ornament seized by the VACB.

15. There is yet another aspect which needs mention here. The trial court has, in the impugned order, referred to Section 18A of the PC Act (as amended by Act 16 of 2018) which deals with attachment or confiscation of money or property procured by means of an offence under the Act. The application for interim custody of the properties was made by the petitioner immediately after their seizure. The impugned order was passed on 21.11.2019. The investigation of the case was then at the nascent stage. By now, the investigating agency should have been able to find out the source of the money and the gold ornaments and it would be possible for it now to give a better picture in that regard before the trial court.

16. In the aforesaid circumstances, though this Court is inclined to dismiss this petition, it finds it proper to grant liberty to the petitioner to file a fresh application before the trial court, with proper persons on the party array. Once a Magistrate passes an order under Section 451 of the Code, he does not become functus officio in that matter (See Vasu v. Unnikrishnan : 1983 KLT 310).

17. Consequently, the revision petition is dismissed. However, notwithstanding the impugned order passed by the trial court and the dismissal of the revision petition by this Court, the petitioner is granted liberty to file fresh application for the same relief, with proper persons on the party array, before the trial court. If any such application is filed, the trial court shall dispose of such application in accordance with law, after hearing all such parties, including the prosecution and the accused.