
(2003) 03 BOM CK 0011

In the Bombay High Court

Case No : Criminal Application No. 242 of 2003

Chandu Chaitram Aswani

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Bombay Prevention of Gambling Act, 1887 — Section 4, 5
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 1 RCR(Criminal) 560

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Ghare, for the Appellant; Mirza, APP, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Rule. Rule made returnable forthwith.

2. Heard Shri Ghare, learned Counsel for the applicant and Shri Mirza, learned Additional Public Prosecutor for the State.

3. Invoking the inherent powers of this Court u/s 482 of Code of Criminal Procedure ("the Code" for short) the applicant has challenged the impugned orders dated 29-5-2002 and 21.6.2002 passed by the learned Judicial Magistrate, First Class as well as the order dated 21.6.2002 passed by the Additional Sessions Judge, Chandrapur, rejecting the relief sought by the applicant-petitioner for releasing the cash amount of Rs. 1,31,571/- on execution of supratnama u/s 451 of the Code.

4. Brief facts are as under :-

The applicant is carrying on the business of Sonam Spare Parts near Bus Stand Ballarshah and his wife is working as Travelling Agent. The police had conducted raid at the premises of the applicant-accused on 16.5.2002, the respondent P.S.O. had conducted raid in the old premises purchased by the appellant and it

is alleged that five persons were found to be playing Worli Matka and that some documents and articles were seized from the said place. The cash amount of Rs. 1,31,571 /- has been seized from the Almirah of the appellant and the offence bearing Crime No. 3039/02 for the offences punishable under sections 4 and 5 of Bombay Prevention of Gambling Act, was registered against the applicant and other co-accused. On completion of investigation the charge-sheet has been filed in the Court of learned Judicial Magistrate, First Class, Rajura.

5. The applicant had filed application for releasing cash amount of Rs. 1,31,571/- on Supratnama on 20.5.2002 and the said application came to be rejected on 29.5.2002. The applicant again filed second application on 17.6.2002 for releasing the cash amount on Supratnama and the said application came to be rejected on 21.6.2002. Being aggrieved by the said orders, the applicant had preferred Criminal Revision No. 110/02 before the Sessions Judge, Chandrapur and said revision was also rejected on 12.7.2002 and this order is under challenge in this application filed u/s 482 of the Code.

6. The learned Counsel for the applicant contended that the said amount of Rs. 1,31,571 /- has no concern with the gambling and hence the same ought to have been released in favour of the applicant on execution of Supratnama. He contended that the impugned orders passed by the Courts below are not sustainable in law. The learned Counsel further contended that both the applicant and his wife are businessmen and Income Tax Payee and as such it is not uncommon to find cash amount at their residential place. He contended that the cash amount recovered from the applicant may kindly be returned to him u/s 451 of the Code. He contended that the cash amount would not be required for identification and the applicant is ready to produce the cash amount as and when directed by the Court. He contended that both the Courts below committed an error in law in rejecting the prayer of the applicant for releasing the cash amount and committed an error in holding that the cash amount seized in the crime may be required to be forfeited and the order impugned is not sustainable in law.

7. The learned Additional Public Prosecutor does not dispute that the amount of Rs. 1,31,571/- has been seized from the house of the applicant as per the seizure panchanama dated 16.5.2002 drawn by the police personnel. It is contended that the said amount of Rs. 1,31,571/- has been seized along with Satta Patti and as such it cannot be returned on execution of Supratnama either u/s 451 or 457 of the Code. He contended that applicant had filed notebook containing entries about income and expenditure of his business and if the entry dated 16.5.2002 on which date raid was effected is perused, it would reveal that total balance of Rs. 1,10,196/- is shown whereas the amount of Rs. 1,31,571/- is alleged to have been found in almirah along with chits of satta patti. He further contended that there was no material to show that the said amount seized by the police in connection with the offence of gambling was carved out by the applicant from some other source i.e. his business. He further contended that the impugned orders passed by both the Courts below are sustainable in law.

8. To appreciate the point raised in this case, it has become necessary for me to advert to sections 451 and 457 of the Code, which reads as under :-

"Section 451: Order for custody and disposal of property" pending trial in certain cases - When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. - For the purposes of this section, "property" includes -

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence".

"Section 457. - Procedure by police upon seizure of property:

(1) Whenever the seizure of property by any Police Officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the article of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

9. A bare reading of aforesaid provisions of law, it would reveal that the property can be disposed of pending trial in certain cases but strictly in accordance with the provisions of section 451 of the Code and for the purpose of this section property includes (a) property of any kind or document which is produced before the Court or which is in its custody; (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

10. On anxious consideration of the rival contentions, the only question that arises for consideration in this case is whether the impugned orders passed by the Court below are liable to be set aside u/s 482 of the Code.

11. If one can have a casual look at this section of law, with the explanation provided therefore, Explanation (b) provided to the main section clearly applied to the facts of the present case and that, therefore, the cash of Rs. 1,31,571/- is

clearly deemed to be the "property" involved in this case and since it was to be under the judicial custody, section 451 of the Code clearly attracted. If it is so, one has to render the workings adumbrated in the main section viz. an obligation in-built in the said section empowering the Court to make such order as it thinks fit which would clearly mean depending upon the circumstances and facts of each case. Therefore, it cannot be made as a general universal rule that any property which is produced before the trial Court involved in such case can automatically be ordered to be returned under the section. The power given to this Court is limited to the extent that while passing such order under this section, the Court must give proper and adequate reason for returning such property by way of interim custody.

12. The legislature cannot be said to have intended the disposal of currency notes in such a way that it would hamper impartial and fair trial. Since the charge-sheet has been filed and the trial is to be commence shortly and the accused are ready to face the trial, it will not be proper or conducive for the Court to direct custody of seized property i.e. currency notes to be returned to the applicant on execution of supratnama simply because currency notes were seized which have nexus with the offence of gambling, would fetch interest is no ground for releasing the property in favour of the applicant because it would hamper impartial and fair trial.

13. In the present case, cash amount of Rs. 1,31,571 /- is said to have been seized while conducting gambling raid. The cash amount was seized from the almirah which was kept inside the house of the applicant. It is also not in dispute that detailed seizure panchanama was prepared on the spot wherein it has been clearly mentioned that this cash amount of Rs. 1,31,751/- was seized along with Satta Patties and, therefore, prima facie, it would reveal that there was some nexus between this cash amount and the offence of gambling.

14. Under the circumstances, projected in the present case on behalf of the respective parties, since the chargesheet has been filed and the trial is yet to commence shortly and the accused are ready to face the trial, I feel that it will not be proper or conducive for me to interfere at this stage with the impugned orders passed by the Courts below. Even otherwise, I do not come across any illegality or erroneous approach in passing the impugned orders which causes a serious prejudice or would result in total failure of justice. In these circumstances, keeping in view that the inherent power of this Court u/s 482 of the Code can be used so sparingly, I am put to every difficulty to exercise my power on the facts of the instant case for the aforesaid reasoning. Therefore, I am not inclined to interfere with the impugned orders passed by the Courts below. In the result, the petition fails and accordingly it is rejected. Rule is discharged.