
(2014) 09 KL CK 0019

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 21545 of 2014

Dharmaraj Bhosale

APPELLANT

Vs

Directorate of Enforcement

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 457, 458
Foreign Exchange Management Act, 1999 — Section 36

Citation : (2015) 1 Crimes 465 : (2014) 4 KLT 62

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : Babu S. Nair and Smitha Babu, Advocate for the Appellant; N. Nagaresh, P.G. Preetha, Assistant Solicitor Generals and P. Vijayaraghavan, State Attorney, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—This matter arises a concern how police has to deal with a matter, where police consider they have no exclusive authority to deal with the seized articles. The facts are as stated below: On receipt of reliable information by the District Police Chief, Kozhikode Rural that some unaccounted money was kept in the house owned by the petitioner at Koduvally, the Shadow police team of District Crime Branch reached the spot on 7.8.2014 and informed the matter to the Sub Inspector of Police, Koduvally; after sending advance search memorandum before the Judicial First Class Magistrate Court-I, Tamarassery, the Sub Inspector of Police reached the spot and found large bags (four in number) with cash amounting to Rs. 1,22,22,200/- in total and other articles. Search list is produced by the official respondents as Ext.R4(a). The controversy in this Writ Petition is against the action of the police in handing over the money to the enforcement authorities without producing the same before the Magistrate Court as per the seizure list.

This Writ Petition questions the authority of the police in handing over the money without obtaining orders from the Magistrate. 2. The enforcement authority has filed a counter affidavit and a detailed statement has been filed by the police

authority also.

3. As it is seen from the counter affidavit filed by the enforcement authority, they are proceeding under the Foreign Exchange Management Act, 1999 (for short, the "FEMA"). This Court is not interdicting any proceedings initiated against the petitioner under FEMA or any other question regarding seizure. The stand in the counter affidavit filed by the enforcement authority is that they are empowered to initiate action under S. 36 of FEMA and also entitled to detain the amount handed over to them by the Police.

4. When police seizes articles suspected to have been involved in an offence not pertaining their jurisdiction, what course of action should be followed by the police, is the question in this Writ Petition. Every public functionary is accountable in law. The law prescribes the manner in which the accountability should be worked out. The police accountability in seizure under law is prescribed under S. 102 of the Code of Criminal Procedure, 1973 which reads as follows:

"102. Power of police officer to seize certain property.--

(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."

5. As has been noted above, under S. 102 of the Criminal Procedure Code the Police has an accountability before the jurisdictional Magistrate. It is, the Magistrate to decide how to deal with the seized articles. The police cannot decide that the seized articles have to be handed over to the enforcement authorities. No doubt, if the Police has a reasonable cause to believe that some other agency or authority has a right to claim over the seized articles, a report

shall be filed before the Magistrate indicating the authority or agency that may likely to claim a right over the seized articles. When a report indicating above is filed by the police officer, the Magistrate is bound to hear that authority before passing an order on the application for release of the seized articles.

6. The enforcement authority, of course can independently investigate and also can raise claim for seized articles in accordance with FEMA. The local police are not under their command. The local police is not accountable to enforcement authorities. The authority to act upon seized articles must flow from the legal authority prescribed under law. This is essentially required because if there are any discrepancies as to the seized articles, this also has to be adjudicated by the Magistrate.

7. In this Writ Petition, the petitioner seeks release of the amount by the enforcement authorities. That relief cannot be granted to the petitioner, as the right of the petitioner, if any, can only be based on the decision of the jurisdictional Magistrate. Therefore, the petitioner shall approach the competent jurisdictional Magistrate to work out his remedies. However, it is admitted that the amount is lying in the bank account maintained by the enforcement authorities. It will continue to remain in the Bank till a decision is taken by the competent jurisdictional Magistrate. In view of the above, third and fourth respondents shall report seizure of the amount as mentioned in Ext.R4(a) before the competent jurisdictional Magistrate. The competent jurisdictional Magistrate shall consider any application filed by the petitioner or any affected parties for release of the amount only after issuing notice to the enforcement authorities.

The Writ Petition is disposed of as above. No costs.