
(2012) 10 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 2326 of 2012

Neeraj Goyal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-10-2012

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 451, 457, 458, 459
Essential Commodities Act, 1955 — Section 3, 6A, 6A(2), 6E, 7
Evidence Act, 1872 — Section 27
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2013) CriLJ 372 : (2013) 4 RLW 3067

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Advocate : Suresh Sahni, for the Appellant; G.S. Rathore, Public Prosecutor, G.P. Sharma and Lokesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—This Criminal Misc. Petition has been filed u/s 482 Cr.P.C. against the order dated 7-7-2012 passed by Additional Chief Judicial Magistrate Ramganj Mandi District Kota in FIR No. 43/11 Police Station Bapawar Kalan District Kota (Rural) Section 457 Cr.P.C. "wherewithal" the application filed by the investigating officer in relation to auction of the seized property was allowed in crass and grotesque contravention of the mandate of legal sanction of Section 457 Cr.P.C. Brief and relevant facts are that on 6-5-2011 Nawal Kishore resident of Gehukheri submitted a written report containing signatures of 33 agriculturists to the SHO Bapawar Kalan alleging therein that Purshottam Mittal, Sumit Mittal, Vimal Mittal, Dinesh Mittal and Hukam Chand Mittal alias Naya Baniya" sons of Bhanwar Lal Mahajan, residents of Bapawar Kalan and their Muneem Shyam Bihari purchased their grains and agricultural products on credit and kept the same in the godowns. It was alleged that they were absconded after giving Kacchi Parchi (receipt) of the grains thereby committing fraud and

cheating with these farmers. On the basis of the said report a case FIR No. 43/2011 was registered for offence under Sections 420, 406 IPC and investigation commenced. During investigation about 418 farmers informed that their agricultural products worth Rs. 9.00 crores was given in trust to the accused Purshottam Mittal, Sumit Mittal, Vimal Mittal, Dinesh Mittal, Hukam Chand Mittal for keeping them in godowns of Bapawar. The accused persons were doing their business in Krishi Mandi and they after winning the faith of the farmers, took their agricultural products for keeping it in the godowns by giving assurance that whenever the prices of the respective agricultural products would increase, the same would be sold and payments would be made to the respective farmers. The investigating officer seized the slips produced by the farmers, recorded the statements of the farmers, also collected the records from the Krishi Mandi Samiti and Axis Bank and recorded statements of other witnesses and since a prima facie case was found against all the five accused efforts were made to search and arrest them. The agricultural products which the accused persons had taken from the farmers on trust were kept in four godowns in Bapawar Kalan. Out of these four godowns, three godowns belong to the accused, while one godown has been stated to be taken on rent. The agricultural products which belong to the farmers kept in these godowns (warehouses) is weighing about 57911 quintals. The farmers stated that these agricultural produces did not belong to firms. The accused persons in the first instance the have transferred in papers the agricultural produce in the names of their firms being run in the name of their family members. On the basis of these transferred papers they prepared cash bills of purchase and sale of the agricultural products in question and on basis of such forged bills had taken a loan of about Rs. 9.00 crores from the Axis Bank. The entire stock of the agricultural products was kept in mortgage with the Axis Bank. Prima facie it is evident that the accused Purshotam Mittal, Sumit Mittal, Vimal Mittal, Dinesh Mittal, Hukam Chand Mittal alias Naya Baniya and accused Mahendra Goyal, Dheeraj Goyal and Neeraj Goyal by criminal conspiracy mortgaged the agricultural products kept in the godowns by the poor farmers on trust thereby grabbing the agricultural products of the poor farmers dishonestly and by cheating and committing breach of trust, committed offences punishable under Sections 420, 406 and 120B IPC.

2. The accused persons Purshottam Mittal, Hukam Chand, Sumit Mittal, Vimal Mittal and Dinesh Mittal were arrested on 20-10-2011 from Bangalore (Karnataka) and on the basis of the information of the accused, the agricultural products lying in the godowns at Bapawar were seized and taken in possession of the Police u/s 27 of the Evidence Act. After investigation charge sheet was filed against these accused persons in the competent Court at Sangod on 19-12-2011 and since accused Mahendra Goyal, Dheeraj Goyal and Neeraj Goyal were absconding, investigation against them was continued in terms of Section 173(8) Cr.P.C. On 30-12-2011 accused Mahendra Goyal and Neeraj Goyal were arrested from Indore (MP). On investigation from the accused records relating to purchase and sale of firm Mohan Lal and Sons and Seth M. L. Goyal and Sons was seized.

From the record it prima facie appeared that the accused persons by committing a criminal conspiracy made forged transactions of purchase and sales of agricultural products belonging to the poor farmers lying in the godowns at Bapawar worth Rs. 9.0 crores and by committing breach of trust, pledged the said agricultural products with Axis Bank for taking huge loans as a result of which about 623 farmers are suffering and regularly agitating against the accused. Challan against accused Mahendra Kumar Goyal and Neeraj Kumar Goyal has also already been filed in the competent Court at Sangod on 21-3-2012. The accused Dheeraj Goyal proprietor of Seth M. L. Goyal and Sons is still absconding. With regard to the agricultural products seized on the information of the accused i.e. Mustard 22551 bags, wheat 15764 bags, Dhanias 458 Bags, Soyabins 173 bags, being of perishable nature the investigating officer i.e. Additional Superintendent of Police Kota Rural moved an application u/s 457 Cr.P.C. before the Additional Chief Judicial Magistrate Ramganj Mandi seeking permission for auction of the said agricultural products. The trial Court after hearing the investigating officer as also the counsels for the parties vide its order dated 7-7-2012 ordered for auction of the agricultural products in larger interest of all concerned parties. The trial Court while exercising the jurisdiction vested in it u/s 457 Cr.P.C. has passed a detailed and reasoned order after taking into consideration all relevant facts particularly the fact that in view of the on going rainy season, there is all possibility of decaying of the agricultural products. The trial Court also discussed in detail the authorities cited by both the parties.

3. Mr. Suresh Sahi, learned counsel appearing for the accused petitioner has contended that allowing the application of the Investigating Officer is legally on untenable grounds. The trial Court has passed the impugned order in crass and grotesque and in contravention of the law, therefore the impugned order deserves to be quashed and set aside. The trial Court while passing the impugned order has exceeded the jurisdiction by taking into consideration of various other facts which were not germane for the real decision of the case. He further argued that it is settled law that while dealing with the issue arising out of the mandate of Section 457 Cr.P.C. sine qua non is the person entitled to the possession but sadly the trial Court missed this aspect of the matter and passed the order in a manner which is unknown to the sound principles of law. He has further stated that bare reading of the impugned order reveals completely and uncontrovertibly that the trial Court has taken into consideration the various circumstances which were not germane rather the petitioner submits that while trial Court embraced the power of the executing Court as there was a civil decree for execution before it and totally missed the complete and conclusive mandate of law arising out of Section 457 Cr.P.C. The impugned order is per se bad as the trial Court has not given any finding or observation in relation to the entitlement of the persons of the seized property and in absence of it impugned order does not stand the scrutiny of law to the legal merits to the total. The trial Court has not only misread but also misinterpreted the various authorities submitted before it and passed the impugned order contrary to the law, therefore the impugned

order is hit by Article 141 of the Constitution of India. In these circumstances it was prayed that the order dated 7-7-2012 may be quashed and set aside.

4. Mr. G. S. Rathore, Public Prosecutor along with the investigating officer and assisted by other advocates, has argued that the trial Court while exercising the jurisdiction vested in it u/s 457 Cr.P.C. has passed a detailed and reasoned order after taking into consideration all relevant facts particularly the fact that in view of the on going rainy season, there is all possibility of decaying of the agricultural products. The trial Court also discussed in detail the authorities cited by both the parties. The challenge made by the petitioner to the order dated 7-7-2012 by filing the present misc. petition is not sustainable as none of the ground taken by the petitioner justify the invocation of inherent jurisdiction by this Court u/s 482 Cr. P.C. Mr. G. P. Sharma, learned counsel has placed reliance on Jugal Kishore v. Babulal 1982 CrLR (Raj) 671 and State of Bihar and Another Vs. Arvind Kumar and Another, .

5. It may be mentioned that this Court on 17-9-2012 rejected the application u/s 482 Cr. P.C. of the Axis Bank Limited filed through Regional Office at 2nd Floor Plot No. 402 Lane No. 2 Raja Park, Jaipur for permission to be impleaded as respondent party. The order dated 17-9-2012 reads as under:

In this matter arising out of application u/s 457 Cr.P.C. filed by the learned Public Prosecutor, an application (8364) has been filed by applicant Axis Bank with the prayer that it may be allowed to be impleaded as party respondent in the petition.

Admittedly, the application on which the impugned order dated 7-7-2012 has been passed was u/s 457 Cr.P.C. filed by the Public Prosecutor, as such no other person is necessary to be impleaded as party to this petition. As a matter of fact, no person other than the Public Prosecutor has any locus in the matter. However, such person may assist the Public Prosecutor.

Consequently, the application (8364) is dismissed. Put up on 20-9-2012.

6. Thereafter applicants Narendra and Chandra Mohan filed applications with the prayer that they may be allowed to be impleaded as party respondent in the petition. On their application this Court on 20-9-2012 passed the following order:

The matter comes up on an application (8557) filed by the applicants Narendra and Chandra Mohan with the prayer that they may be allowed to be impleaded as party respondent in the petition.

As the present matter arises out of application u/s 457 Cr.P.C. filed by the learned Public Prosecutor, in my considered opinion, no other person is necessary to be impleaded as a party to this petition. However, such person may assist the learned Public Prosecutor, if they so desire. Put up on 27-9-2012.

7. This Court on 27-9-2012 directed the counsel for the petitioner to place on record the applications filed by him as well as the other side in respect of Supurdagi of the goods. The matter was directed to be taken up on 4-10-2012.

On 4-10-2012, the learned counsel for the petitioner filed the photostat copy of the application dated 27-2-2012 of the Investigating Officer, reply to the application dated 27-2-2012 filed by Neeraj Goyal resident of A 27 Vallabh Nagar Kota, application dated 2-4-2012 filed by Neeraj Goyal before the trial Court, the order dated 3-12-2011 passed by the trial Court.

8. It may also be mentioned that M/s. Axis Bank filed a misc. petition No. 2041/2010 and vide order of this Court dated 30-11-2010, this Court passed the following order:

(Vernacular matter omitted)

9. It may also be mentioned that in the order dated 7-7-2012 the trial Court in Para No. 5 of the operative part of the order mentioned as under:

(Vernacular matter omitted)

Thus it is clear that the Axis Bank has already been given rights to get the property of the accused persons by way of guarantee in accordance with law.

10. It may also be mentioned that on the criminal misc. petition filed by the accused persons being S.B. Criminal Misc. petition No. 3170/2011, this Court passed the following order on 3-11-2011:

(Vernacular matter omitted)

11. Before proceeding further it would be necessary to have a look at the judgments of the Apex Court and the provisions of Sections 457 and 459 Cr.P.C.

Sections 457 and 459 Cr.P.C. which are relevant for the present controversy read as under:

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 articles 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.

459. Power to sell perishable property.--If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such

property is less than 1(five hundred rupees), the Magistrate may at any time direct it to be sold: and the provisions of Section 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

The Apex Court in *Satnam Agro Industries and Another Vs. State of Punjab and Others*, held at Page 785:

2. This Court on 9-9-2008 had given a proposal to the counsel for the parties to the effect that paddy/rice, which is a perishable item lying in the Court custody, be sold by public auction to be conducted by the Court to avoid any further loss and the sale proceeds be deposited in the Court and the Court shall keep the said amount in a fixed deposit receipt in a nationalised bank to earn interest on the said amount. But in the meantime, complaint filed by M/s. Punjab State Civil Supplies Corporation Ltd. (in short "PUNSUP") and declaration suit may continue and on the end of the proceedings whosoever is found entitled shall get the sale proceeds received by public auction along with interest accrued thereon. It was made clear to all the parties that whosoever would be responsible for causing loss should make good the difference of the actual amount minus the sale proceeds to the other party along with interest as directed by the Court.

3. Today, Ms Jayashree Wad, learned counsel appearing for PUNSUP, submits that the said proposal for selling the paddy/rice by public auction is acceptable to the Corporation. She further submits that the amount so recovered from the open auction shall not be paid to the appellant without furnishing bank guarantee.

4. We have gone through the judgment of the High Court impugned in this appeal. Looking to the facts of the case and the controversy involved, we in the interest of both the parties order that the paddy/rice presently lying in the Court custody at Guruharsahai, District Ferozepur shall be put to public auction. Additional Chief Judicial Magistrate, Ferozepur shall conduct the public auction with the help of the Collector of the district or any other officer authorized by the Collector, after giving due publicity to the prospective auction-purchasers as per the procedure adopted by the Executive Officer concerned. The sale proceeds received from such auction, initially shall be paid to the appellant. M/s Satnam Agro Industries subject to the condition that the appellant firm shall furnish bank guarantee for the said amount before the Additional Chief Judicial Magistrate, Ferozepur. The process of auction shall be finalised within six weeks from this order. All rights and contentions raised by the parties before us are left open for the decision of the appropriate authority in appropriate proceedings. We hope that the Civil Suit and the criminal proceedings pending in the respective Courts shall be expeditiously decided.

The Apex Court in *State of Bihar and Another Vs. Arvind Kumar and Another*, held as under:

6. The EC Act was enacted to safeguard the public interest considering it necessary in the interests of the general public to control the production, supply and distribution of, trade and commerce in, certain commodities through the

legislation. It was in the light of the aforesaid public policy that Section 3 of the EC Act empowered the Government to issue notifications and once a notification is issued, it enables the competent authority to confiscate the goods u/s 6-A and prosecution leading to punishment provided u/s 7 of the EC Act. The Collector has been empowered u/s 6-A, if it is found to be expedient to sell the seized commodity which is subject to natural decay, at a controlled price or by public auction or dispose of through Public Distribution System to avoid artificial shortages, maintain the price line and secure equitable distribution thereof through fair price shops as it is in the interest of the general public.

7. Admittedly, the High Court has not even taken a prima facie view that the State Government had not issued twice any order/notification u/s 3 of EC Act through the FIR made reference to Clause 6(a) of the Public Distribution System (Control) Order, 2001 issued u/s 3 of the EC Act. Respondent also referred to the said control Order 2001 in Para 3 of the Crl.W.J.C. No. 215 of 2011 filed by them. More so, the question of ownership of the goods seized is a question of fact which ought not to have been gone into by the High Court in its revisional or extra-ordinary jurisdiction. Further, there is nothing on record on the basis of which the issue of ownership has been decided by the High Court. There was no cogent material on record before the High Court on the basis of which direction to release the goods so seized could be issued.

8. We are at pains to observe that the High Court has dealt with the issue in most casual and cavalier manner without any application of mind showing complete disregard of the legislature enacting the provisions for general welfare.

9. This Court while dealing with a similar issue in *Shambhu Dayal Agarwala Vs. State of West Bengal and Another*, held that whenever any essential commodity is seized, pending confiscation u/s 6-A, the Collector has no power to order release of the commodity in favour of the owner. Having regard to the scheme of the Act, the object and purpose of the statute and the mischief it seeks to guard, it was further held that the word "release" in Section 6-E is used in the limited sense of release for sale etc. so that the same becomes available to the consumer public. The Court held as under:

...No unqualified and unrestricted power has been conferred on the Collector of releasing the commodity in the sense of returning it to the owner or person from whom it was seized even before the proceeding for confiscation stood completed and before the termination of the prosecution in the acquittal of the offender. Such a view would render Clause (b) of Section 7(1) totally nugatory and would completely defeat the purpose and object of the Act. The view that the Act itself contemplates a situation which would render Section 7(1)(b) otiose where the essential commodity is disposed of by the Collector u/s 6-A(2) is misconceived. Section 6-A does not empower the Collector to give an option to pay, in lieu of confiscation of essential commodity, a fine not exceeding the market value of the commodity on the date of seizure, as in the case of any animal, vehicle, vessel or other conveyance seized along with the essential commodity. Only a limited

power of sale of the commodity in the manner prescribed by Section 6-A(2) is granted. The power conferred by Section 6A(2) to sell the essential commodity has to be exercised in public interest for maintaining the supplies and for securing the equitable distribution of the essential commodity.

The said judgment was followed and approved by this Court after explaining the scope of the statutory provisions in *Oma Ram Vs. State of Rajasthan and Others*, .

10. What we found shocking in the instant case is that the petition was filed before the High Court for quashing of the FIR and alternatively for releasing the seized items and the High Court without giving any reason whatsoever disposed of the petition observing as under:

Considering the submissions of the parties, in the opinion of the Court, continuing the seizure of the seized items for a long time may not be justified at least the seizure of the wheat.

This is the only reason given by the High Court without even considering what were the averments on behalf of the parties and without considering the requirement of the statutory provisions.

11. In the subsequent order dealing with the ownership of the wheat the High Court has only taken note of the fact that as the respondents herein were prepared to furnish adequate/sufficient security to the satisfaction of the Court below for release of the wheat in question, the wheat could have been released by the CJM. In case the learned CJM came to the conclusion after appreciating the evidence on record that the respondents/applicants were not in a position to show any document which may show their ownership to the wheat, there was no justification for the High Court to issue directions for release of such material merely because applicant could furnish the security. If it is so, any stranger or third party may give sufficient security and get the seized goods released in his favour. Such a course is not permissible even while deciding the application u/s 451/457 of the Code of Criminal Procedure, 1973. A person having no title/ownership over the seized material may get the same released on furnishing security and sell it in black market and earn profit several times more than the amount of security furnished by him. We fail to understand as how such an order of release which defeat the very purpose for which the EC Act was enacted, could be passed.

12. I have gone through the order dated 7-7-2012 passed by the trial Court and the other material placed on record. It is an admitted fact that Mustard 22551 bags, wheat 15764 bags, Dhania 458 Bags, Soyabin 173 bags, being of perishable nature, cannot be kept in seizure for a long time and keeping this in view the Investigating Officer filed application u/s 457 Cr.P.C. for auctioning the perishable agricultural products before the trial Court. In the order dated 7-7-2012, the trial Court observed as under:

(Vernacular matter omitted.....Ed.)

13. A bare perusal of the above finding would make it clear that there is no perversity in the order passed by the trial Court on the application filed by the Investigating Officer. I am in agreement with the findings arrived at by the trial Court in the order dated 7-7-2012. The order dated 7-7-2012 passed by the trial Court is in accordance with the provisions of the Criminal Procedure Code I mentioned above and the rulings cited above of the Apex Court. For the reasons mentioned above and in the facts and circumstances of this case, the order passed by the trial Court dated 7-7-2012 does not call for any interference to prevent the abuse of the process of the Court or otherwise to secure the ends of justice in the inherent jurisdiction of this Court u/s 482 Cr.P.C. The order is just and proper. The criminal misc. petition being devoid of merit deserves to be rejected. It is hereby rejected. The stay application also stands disposed of.