
(2022) 11 CAL CK 0083
In the Calcutta High Court
Case No : Criminal Revision No. 240 Of 2019

Rogina Bibi @ Rezina Bibi @ Bibi Rejina	APPELLANT
Vs	
State Of West Bengal & Ors.	RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 394, 411, 448, 506
Code Of Criminal Procedure, 1973 — Section 437, 451, 452, 457

Citation : (2022) 11 CAL CK 0083

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Prosenjit Mukherjee, Binoy Panda, Puspita Saha

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

The revisional application is against an Order dated 07.04.2017 passed by the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum in G.R Case No. 307 /17 relating to Rampurhat Police Station Case No. 109/17 under Sections 448/394/506/34 of the Indian Penal Code and adding Section 411 of the I.P.C and quashing of the charge-sheet in the said case.

As seen from the FIR the petitioner Rogina Bibi is the complainant and the opposite party No. 2 and 3 are the accused persons in this case. Charge-sheet has been submitted against the opposite party No.2 and 3 for offence punishable under Sections 448/394/411/506/34 of the IPC as such prayer for quashing of the charge-sheet appears to be misconceived.

The relief prayed for by the petitioner is against the Order dated 07.04.2017 passed by the learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum in G.R Case No. 307/17 relating to Rampurhat P.S Case No. 109/19.

Vide the said Order, the learned Magistrate considered the prayer of the

petitioner /de facto complainant herein praying for return of the seized cash. The learned Magistrate passed an Order stating that till the closing of the trial the seized cash could not be returned.

It is found that the said Order contains no reasons nor any findings as to why the seized cash is required to be retained.

Mr. Prosenjit Mukherjee, learned counsel for the petitioner submits that the petitioner in this case had filed the written complaint with Rampurhat P.S on 04.04.2017 stating that when she was alone in her house at 14:30 hrs the accused persons entered the house forcefully and took away Rs.2,10,000/- in cash from her almirah by holding a knife to her neck. During investigation the police arrested the accused persons and on search recovered Rs.1,28,000/- cash from the bag of accused Shilpa Mondal @ Momtaz (opposite party no. 2) and the same was seized under proper seizure list.

Learned Counsel for the petitioner has relied upon Section 457 of the Code of Criminal Procedure and has submitted that the petitioner/de facto complainant is entitled to get the seized cash back on proper undertaking. It is further submitted that the petitioner is facing severe financial crisis and the said cash is required for her personal use.

Mr. Binoy Panda, learned counsel for the State submits that the Court may consider the materials on record and pass necessary Orders.

In the present case the charge-sheet has been submitted against the accused persons/ O.P No. 2 and 3. Cognizance has been taken by the learned Magistrate. As such the proceedings before the Trial Court is in the stage of commencement of trial.

In Ramparkash Sharma-Vs- State of Haryana reported in (1978) AIR 1282 the Supreme Court on 18.04.1978 considered the procedure under Section 437 of the Code of Criminal Procedure.

Justice Krishna Iyer, V.R. while deciding the said case observed;

"....Where property has been seized and/or otherwise produced before the Court, the manner to dispose of such property is governed by Sec. 451...."

"....Whenever the claimant asks for the property back, it does not mean that he should be given back the said property. That has to be decided on its own merits in each case and the discretion of the Court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of these seized-articles at the time of the trial. If the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return."

The Court relied upon the decision cited in (1997) 4 SCC 368 in Smt. Basava Kom Dyaman Gond Patil-Vs- State of Mysore & Ors. Justice Krishna Iyer further held;

"....Chapter 34 of the Criminal Procedure Code deals with disposal of property. There is a trichotomy in the sense that where property has been seized by the police, but not produced before the Court, the power to dispose it of is covered by Section 457. Where property has been seized and/or otherwise produced before the Court, the manner to dispose of such property is governed by Sec. 451. If the question of disposal arises after the enquiry or trial in any criminal court is concluded, the disposal of the property involved in the case is governed by Sec. 452."

Section 457 of the Cr.P.C covers the facts of the present case.

Admittedly the police have recovered a considerable sum of money from the O.P. No. 2/accused and has seized the same in connection with the present case registered against O.P. No. 2 and 3/accused, on the basis of a complaint filed by the petitioner/ defacto complainant herein. The investigation in the case is over. Charge-sheet has been filed and cognizance has been taken.

In view of the guidelines in the decision of Justice Krishna Iyer,(in Ram Parkash Sharma-Vs- State of Haryana (supra) the decision of the learned Magistrate vide Order dated 07.04.2017 is set aside as the learned Magistrate has passed the said Order without any findings and without giving proper reasons. The learned Magistrate failed to decide the prayer of the petitioner/defacto complainant on its own merit. Every case has to be decided on its own merit and discretion of the Court has to be exercised after due consideration, in the interest of justice including the prospective necessity of the production of the seized articles at the time of the trial (as in the words of Justice KrishnaIyer).

The Court in Ram Parkash Sharma (supra) further held....

"....if the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return ...".

In such cases where such prayer is either allowed or rejected the same has to be reasoned and with clear findings.

Justice Krishna Iyer further held;

"All that we, need do at the moment is to uphold the power of the Court to release the property and direct the Special Judge to hold an investigation into, the necessity for the notes seized to be retained with the police or in the Court for future use at the time of the inquiry or trial. If he is of the opinion that the notes are so required, the property shall not be released. If, on the other hand, the notes are not needed in any manner in the later stages of the inquiry or trial, it will be proper for the Court to release the property on the appellant furnishing adequate security."

Accordingly on setting aside the Order dated 07.04.2017 of the learned Magistrate in G.R. Case No. 307/17 relating to Rampurhat P.S Case No. 109/17

this Court directs the learned Magistrate to consider the materials on record and hear all the stakeholders regarding the necessity for the seized cash to be retained and come to a definite finding either to release the cash or retain the same in accordance with law. The learned Magistrate will accordingly consider the prayer of the petitioner for return of the seized cash afresh and pass appropriate Orders under Section 457 of the Code of Criminal Procedure and will dispose of the said matter within a month from the date of communication of this Order.

Criminal Revision No. 240 of 2019 is accordingly allowed.

The learned Magistrate will act as per the observation and directions of the Court given above.

There will be no order as to costs.

All connected Applications stand disposed of.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.