
(1951) 08 OHC CK 0002
In the Orissa High Court
Case No : Criminal Revision No. 125 of 1951

Sailabehari Chatterji

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 30-08-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 517, 523(1)
Penal Code, 1860 (IPC) — Section 161
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1951) 17 CLT 354

Hon'ble Judges : Ray, C.J;Narasimham, J

Bench : Division Bench

Advocate : S.K. Ray, for the Appellant; Government Advocate, for the Respondent

Judgement

Narasimham, J.—This revision is against the order of the District Magistrates of Sundargarh forfeiting a sum of Re. 6,600/2/- recovered from the house of the Petitioner on the ground that the said sum was recovered under such circumstances as would create - a suspicion that it was part of the illegal gratifications received by the Petitioner while discharging his duties as the Sub-divisional Magistrate of Sundargarh.

2. The material facts are these: The Petitioner is a member of the Orissa Administrative Service and is now under suspension. He joined as Subdivisional Magistrate, Sadar, Sundargarh on 19-11-48. On 27-7-49 his house was searched by the police and sum of Rs. 6.600/2/0 was seized from an almirah was under lock and key. During the same search the police recovered twenty marked ten-rupee currency notes and also cash of Rs. 1,074/ from an open drawer in his room. A regular case under 161 I.P.C. (G.R. case no 1/268/115/49) was started against the Petitioner in respect of the sum recovered from the open drawer. That case ended in his conviction in the Court of District Magistrate, Sundargarh, but on appeal the Sessions Judge set aside that conviction and sentence. The police then started another case u/s 5(2) of the Prevention of Corruption Act (Act

II of 1947) in respect of the sum of Rs. 66,00/2/ recovered from the locked up almirah After due investigation Final Report was submitted in that case to the affect that the case was true but the evidence was insufficient. A question then arose about the disposal of the sum of Rs. 6,600/2 and the District Magistrate after giving the Petitioner an opportunity to show cause passed an order of forfeiture on 21-7-51. His main ground in support of his order was that the Petitioner started his official career as a Sub-Deputy Collector in 1939 and the total salaries received by him from that date till the date of his suspension when compared with the probable expenditure which he must have incurred during that period would not leave such a heavy balance in his possession. He further held that the Petitioner's explanation to the effect that the said sum was part of the proceeds of the sale of his ancestral house at Bhubaneswar was not acceptable. He therefore thought that there were reasonable ground to suspect that the said sum was acquired by the Petitioner by way of illegal gratification.

3. The order of the District Magistrate was undoubtedly passed u/s 523(1) Code of Criminal Procedure. That section authorised the Magistrate to "make such order as he thinks fit respecting the disposal of" any property that might have been seized by the police as having been found under circumstances which creates suspicion of the commission of any offence. Section 517 of the same Code which also authorises a Court to pass such orders for the disposal of any property produced before it after the termination of the trial is in wider terms and expressly says that the disposal may be "by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise." It is true that under Sub-section (1) of Section 523 Code of Criminal Procedure the expression disposal has not been explained as including confiscation but in *Ramaswami Aiyar v. Venkateswara Iyer* 14 Cri.L.J. 27 it was held that the said expression would include forfeiture or confiscation also.

The same view was taken in *Syed Mahbub v. Emperor* AIR 1936 Nag. 266 where the confiscation of a sum of Rs. 1,206-0-3 found buried under the floor of the house of the Petitioner was held to be valid. I therefore find no illegality in the order of the District Magistrate ordering the forfeiture of the said sum to the Government.

4. But the question arises whether in the circumstances of this case such an order was a proper one. It is a well-settled rule that where no case is started by the police, properties seized during the investigation stage should ordinarily be returned to the person from whose possession they were recovered. see *Kyin Ton v. E Cho* 6 Cri.L.J. 126; *Devidan Sowcar and Another Vs. Janaki Ammal and Others*, ; In re; *Paidi Subbayya* AIR 139 Md. 905 and AIR 1942 128 (Oudh) . Doubtless there may be exceptional cases as in the *Nagpur case* AIR 1936 Nag 226 where this general rule may be departed from. The question therefore arises as to whether the recovery in the present case from the house of the Petitioner was of such a nature as to justify the order of forfeiture.

5. In the explanation given by the Petitioner he stated that On 31-7-48 hi

ancestral house and some landed property at Bhubaneswar had been sold for a sum of Rs. 11,000/- out of which a sum of Rs. 3,000/- was paid to the Pari Bank which was one of the mortgagees of the said property. He suggested, though not in very clear terms, that the sum of Rs. 6,600/2/- was the balance of the said purchase money. He further stated that he kept such large sum with him because he was anxious to purchase a second hand car if a good car was available. During police investigation it as verified that the Petitioner's ancestral house was in fact sold for a sum of Rs. 11,000/- in July, 1948 and that Rs. 3,000/- out of the same amount was utilised in discharging the debt to the Puri Bank. The investigating officer made the following note in the diary which appears to have very much influenced the District Magistrate.

Accused S.B. Chatterji the Petitioner) did not get any thing out of the ,entire amount of. Rs. 8,000/- as the whole amount was required by Srimati Saratkumari Devi to clear up loans incurred by her husband. Details on this account will have to be collected to counter Act any possible plea of the accused that the huge accumulations found with him accrued from the sale.

It may be mentioned that Srimati Saratkumari Devi is the widowed mother of the Petitioner; The learned District Magistrate accepted this report in the case diary without further scrutiny, A mere statement by the investigating officer that the balance of the sale proceeds was utilised by the Petitioner's mother for clearing the other debts incurred by her husband should not have been accepted without further verification. In fact the investigating S. I. himself pointed out the necessity of collecting further details regarding such loans, I have carefully scrutinised the case diary but I do not find that any further investigation was directed towards this object. In fact the police seem, to have completely ignored the necessity of ascertaining who were the other creditors of the Petitioner's father and what were the amounts paid to them in discharge of their loans. Collection of such materials should not have been difficult because such a large sum of money as Rs. 8,000/- could not have been given without proper receipt. For "some inexplicable reason the investigation of this case was not carefully done in respect of this aspect of the case.

6. The result is that there is practically nothing to discredit the Petitioner's statement that the said sum was part of the sale proceeds of his ancestral home at Bhubaneswar. The learned District Magistrate thought that if the said sum had been acquired by honest means he would have surely kept it in the Imperial Bank at Cuttack or some other reliable Bank. There is doubtless some force in this observation. But one has to remember that the Petitioner was then serving in a far off place like Sundargarh where banking facilities were not available. Moreover as stated by him he wanted to keep a large sum of money in ready cash so that he may buy a second hand car whenever a good car comes to his notice. This explanation seems prima facie reasonable.

7. I therefore see no reason why the said sum which admittedly recovered from the possession of the Petitioner should not be returned to him. The order of the

District Magistrate is therefore set aside and it is directed that the sum of Rs. 13,600/2/- be returned to the Petitioner.

Ray, C.J.

8. I agree.