

(2015) 03 KAR CK 0140

In the Karnataka High Court

Case No : Criminal Revision Petition No. 100031/2014

State of Karnataka

APPELLANT

Vs

Subramanya Biliya Kodiya Mavinakurva and Others

RESPONDENT

Date of Decision : 03-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401, 457
Karnataka Police Act, 1963 — Section 87

Citation : (2015) 03 KAR CK 0140

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : K.S. Patil, HCGP, for the Appellant; Anoop G. Deshpande, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—This revision petition is filed under Section 397 read with Section 401 of Cr.P.C. by the State, aggrieved by the order passed by the learned Magistrate in releasing the interim custody of the cash amount in favour of accused No. 2/respondent No. 2.

2. Succinctly stated, the P.S.I. of Honnavar Police Station charge sheeted the respondents for the offence punishable under Section 87 of K.P. Act. The accused were on bail. During the raid the Investigating Officer had seized cash of Rs. 34,468/-, which is alleged to be the gaming money. Respondent No. 2 moved an application under Section 457 of Cr.P.C. for release of the said amount. The application was contested by the prosecution. The court below allowed the application and released the interim custody of cash amount in favour of the applicant/respondent No. 2 on executing an indemnity bond for Rs. 50,000/- with one surety for the likesum. However, care was taken by the court below by directing accused No. 1 to assist the C.M.O. of the Court to take the photographs of the currency notes at his cost.

3. Learned counsel for the petitioner - State submits that the trial Court has lost

sight of the fact that the amount was seized while the accused were indulged in playing Andar Bahar. In the event prosecution successfully proves its case, said money is liable to be confiscated to the State Government. The court had acted on the fabricated documents produced by the accused No. 2 projecting that the money belong to Snkumar Roadlines, under whom he was employed. Though the prosecution had disputed the said document without probing about the veracity of the document, the trial Court has hurriedly released the interim custody of the cash amount. In fact the said cash amount is required to be marked in evidence during the trial. The currency notes are not perishable in nature and there was no dire necessity to release the interim custody of the cash amount in favour of second applicant. The accused No. 5 has pleaded guilty and was imposed fine, that strengthens the case of prosecution. In the judgment of this Court reported in T. Narayanaswamy Vs. State and others, , it has been held that release of money seized for the interim custody is bad in law. Hence, the impugned order is liable to be set aside.

4. In reply, Sri Anoop G. Deshpande, learned counsel for R1 to R4 and R6 to R7 submits that the impugned order being in the nature of interlocutory order is not amenable to the revision jurisdiction. Hence, the very petition itself is not maintainable. In fact, the money seized was not the gaming money, but it belongs to his employer Srikumar Roadlines and the court below having satisfied about his contention was pleased to release the interim custody to his possession. However, the interest of State is protected by directing him to execute the indemnity bond for Rs. 50,000/- with one surety for the likesum. Even the interest of the prosecution about the identification of the currency notes is also taken care by directing him to assist the C.M.O. of the Court at his cost in taking photographs of the currency notes.

5. Respondent No. 5 is served and not represented.

6. As regards the first contention about the maintainability of the revision petition, by a catena of judicial pronouncements of this Court and other High Courts, it is held that the release of interim custody of the seized property is the nature of adjudication of the rights of the parties in reference to the said property. The said order is amenable for revision jurisdiction under Section 397 of Cr.P.C. Hence, there is no merit in the contention that this petition is not maintainable.

7. As regards the merit of the impugned order is concerned, the court below being convinced with a certificate produced by the second applicant issued by his employer Srikumar Roadlines and also daily enquiry report dated 14.11.2012 has inferred that he is an employee of the said Roadlmes. Keeping open the question of the ownership of the seized property/cash amount in question the court below has ordered interim custody by taking the photographs of currency notes and also by calling upon the applicant to execute the indemnity bond of Rs. 50,000/- with one surety for the likesum.

8. Under the circumstances, I hold that the impugned has not prejudiced the case of the State and it is not illegal. The grounds urged by the State lacks merits and does not call for interference of this Court. Accordingly, petition is rejected.