(2021) 08 KL CK 0074

In the High Court Of Kerala

Case No : Criminal Miscellaneous Application No. 256 Of 2021

Vishnu Prasad APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 10-08-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 451, 482
Indian Penal Code, 1860 — Section 120B, 406, 408, 409, 420, 465, 468, 471, 477A
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2021) 08 KL CK 0074

Hon'ble Judges : R. Narayana Pisharadi, J

Bench : Single Bench

Advocate : J.Ramkumar, P.J.Joseph John, Rekha S

Final Decision : Dismissed

Judgement

R.Narayana Pisharadi, J

1. The petitioner is the first accused in the case registered as Crime No.83/2020 of the Thrikkakkara Police Station under Section 13(1)(a) read with

13(2) of the Prevention of Corruption Act, 1988 and also under Sections 406, 408, 409, 465, 468, 471, 477A, 420 and 120B of the Indian Penal Code

and also for offences under the Information Technology Act, 2000.

2. The prosecution case, in short, is as follows: The petitioner was the section clerk in the Disaster Management Cell of the Ernakulam District

Collectorate, which was constituted for the release of money from the Chief Minister's Distress Relief Fund (CMDRF). As per the system prevalent

in the cell, amount due to the victims of the flood that occurred in Kerala was being distributed from the CMDRF through Bill Information

Management System. The petitioner, pursuant to the conspiracy hatched with the other accused, misappropriated Rs.27,73,500/-by committing digital

fraud during the period from 14.01.2019 to 24.01.2020.

3. During the investigation of the case, the Toyota Innova car bearing registration number KL-07-CB/1110 and the Royal Enfield motorcycle bearing

registration number KL-07-CS/7000 owned by the petitioner, were seized by the investigating officer and produced before the Court of the Enquiry

Commissioner and Special Judge, Muvattupuzha.

4. The petitioner filed an application as Crl.M.P.No.509/2020 before the Special Court under Section 451 Cr.P.C for releasing the car and motorcycle

to his interim custody.

5. As per Annexure-A1 order dated 13.11.2020, the Special Court allowed the aforesaid application filed by the petitioner on certain conditions.

Conditions 6 to 8 mentioned in Annexure-A1 order are as follows:

â??6. The petitioner shall execute bond for Rs.5,00,000/- (Five Lakhs only) with two solvent sureties each for like sum to the satisfaction of this court.

7. R.T.O Kakkanadu is directed to depute a Motor Vehicle Inspector, at the request of Investigating Officer, to inspect both the vehicles and to assess the value of

both vehicles within 4 days of request by the Investigating Officer.

8. The petitioner shall produce Bank guarantee equal to the value of the vehicles assessed by MVI.â??

6. Aggrieved by the order of the Special Court, imposing conditions 7 and 8 as above, the first accused has filed this petition under Section 482 Cr.P.C

for modifying/deleting those conditions.

7. Heard learned counsel for the petitioner and the learned Public Prosecutor.

8. Learned counsel for the petitioner submitted that the condition imposed by the Special Court, that the petitioner shall furnish bank guarantee equal to

the value of the vehicles, is harsh and unreasonable. Learned counsel for the petitioner would submit that, the petitioner is only a Clerk in a

Government department, who gets only a nominal salary and he is not in a position to furnish the bank guarantee.

9. Learned Public Prosecutor has submitted that the petitioner is accused of misappropriating public funds to the tune of Rs.27,73,500/- during the

period from 14.01.2019 to 24.01.2020 and it was during the aforesaid period that the petitioner had purchased the vehicles and therefore it is evident

that he had acquired the vehicles by using the misappropriated amount. Learned Public Prosecutor would submit that, considering the aforesaid

circumstance, it cannot be found that the condition regarding furnishing of bank guarantee imposed by the Special Court is harsh or unreasonable.

Learned Public Prosecutor has also submitted that the petitioner is an accused in another case in which he is alleged to have misappropriated an

amount of Rs.67,78,100/- from public funds.

10. In the statement filed by the investigating officer, it is mentioned as follows:

â??Investigation has revealed that he and his accomplices has misappropriated an amount of Rs.27,73,500/- between the period from 14.01.2019 to 24.01.2020.

During this period he bought an Innova Car on 18.10.2019 by spending Rs.13,75,000/- (Rupees Thirteen Lakh Seventy Five Thousand only). On 18.07.2019 he

bought a Royal Enfield Motor Cycle by spending Rs.1,99,903/-(Rupees One Lakh Ninety Nine Thousand and Three Only). Investigation has revealed that during

the period of acquisition of these vehicles he has no sufficient source of income to account for the money spent. So it is assumed in good faith that he has used the

proceeds of crime from the misappropriated amount of CMDRF Fund for the purpose of buying these two vehicles.

5. So believing in good faith that the petitioner had acquired these assets by spending the proceeds of this crime, the Investigating Officer seized Tayota Innova

Car bearing Registration No. KL 07-CB-1110 and Royal Enfield bearing Registration Number KL-07-CS-7000 and their two keys each vide Mahazar dated

25.09.2020. The properties have been produced before the Hon'ble Vigilance Court Muvattupuzha in KPF 151A and KPF 15.â??

11. Ordinarily, this Court would have interfered with the order of the Special Court directing the petitioner to furnish bank guarantee equal to the value

of the vehicles as a condition for releasing the vehicles to him. But, the facts of this case are very peculiar. The legality and validity of the condition

regarding furnishing of bank guarantee imposed by the Special Court have to be considered in the background of the facts stated by the investigating

officer which have been quoted earlier.

12. Misappropriation of public funds was allegedly committed by the petitioner during the period from 14.01.2019 to 24.01.2020. The Toyota Innova

car was purchased by him on 18.10.2019. The Enfield Motorcycle was purchased by him on 18.07.2019. The learned counsel for the petitioner has

not disputed the submission made by the learned Public Prosecutor regarding the date of purchase of the vehicles by him.

13. Learned counsel for the petitioner submitted that the petitioner is only a Clerk employed in a Government department and that he is not in a

position to furnish bank guarantee as directed by the Special Court. If this submission is accepted as true, it is not explained how the petitioner

acquired the car and the motorcycle worth lakhs of rupees. The very fact that, the car and the motorcycle were purchased by him during the period in

which he has allegedly misappropriated huge amount of public funds, leads to a reasonable presumption that he had acquired those vehicles by using

the misappropriated amount.

14. At this juncture, it is apt to quote the words of the Apex Court in K.Veeraswami v. Union of India : (1991) 3 SCC 655, which read as follows:

â??If one possesses assets beyond his legitimate means, it goes without saying that the excess is out of ill-gotten gain. The assets are not drawn like nitrogen from

the air. It has to be acquired for which means are necessaryâ??.

15. Having considered the above facts and circumstances of the case, I find no sufficient ground to interfere with the order of the Special Court

directing the petitioner to furnish bank guarantee equal to the value of the vehicles, as a condition for releasing the vehicles to his interim custody. The

Crl.M.C is liable to be dismissed.

Consequently, the petition is dismissed.

