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Court : Rajasthan

Decided On : Mar-30-1994

Reported in : 1994(1)WLN686

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Misc. Petition Nos. 280, 281 and 283 of 1993

Appellant : Ashok Kumar and anr.

Respondent : The State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. These three miscellaneous petitions raise a common question of fact and the law and, therefore, they are being disposed of by this common judgment.

2. The petitioners were tried by the learned Additional Sessions Judge, Rajsamand, for the offences under Sections 395, 120B, 342 and 307 I.P.C. The learned Additional Sessions Judge, after trial, convicted and sentenced all of then for the aforesaid offences. An appeal was filed by the petitioners before the High Court which was allowed. After acquittal, the petitioners moved an application for delivery of the amount which was recovered from them by the investigating agency

during the investigation, claiming that amount to be their own. The learned Additional Sessions judge, Rajsamand, on this application, directed the Additional Chief Judicial Magistrate, Rajsamand, to pass an appropriate order on the application regarding disposal of the property/amount which was recovered during the investigation. A part from the petitioners, an amount Nawab Khan. The Income Tax Department, also, filed an application that the dues of the Income Tax Department against these persons may, also, be paid to the Department out of the amount recovered from the petitioners during the investigation. The learned Additional Chief Judicial Magistrate, Rajsamand, by his order dated 7-10-89, directed that the amount of Rs. 3,50,000/- may be paid to Bheru Songh and Chawand Singh, Rs. 5000/- to Chand Mal Rs. 1,60,000/- to Ashok Kumar, Rs. 1400/- to Dilawar, Rs. 14,700/- to Rana Jhuneja and Rs. 4000/- to Kishan lal. However, the applications filed by Ram Singh Bhati, Nawab Khan and the Income Tax Department were rejected. Dissatisfied with the order passed by the learned Additional Chief Judicial Magistrate, Rajsamand, the State Government filed a revision petition before the Additional Sessions Judge, Rajsamand, challenging the order dated 7-10-89, passed by the learned Additional Chief Judicial Magistrate, Rajsamand, challenging the order dated 7-10-89, passed by the learned Additional Chief Judicial Magistrate, Rajsamand, regarding delivery of the amount. The revision petition, filed by the state, was allowed on 5-9-90, and Ashok Kumar, Bheru Singh Bhati, Chawand Singh and Chand mal were directed to deposit the amount in the Court, which they received in pursuance to the order dated 7-10-89, passed by the learned Additional Chief Judicial Magistrate, Rajsamand, but so far as the order regarding delivery of the amounts to Rana Jhuneja, Dilawar Khan and Kishan lal is concerned, it was maintained. Petitioners Ashok Kumar, Rana Jhuneja and Chawand Songh filed three miserliness petitions were allowed by a Single Judge of this Court vide His judgment/order dated 18-5-92. The orders passed by the learned Additional Chief Judicial Magistrate, Rajsamand, as well as by the learned Additional Sessions Judge, Rajsamand, were set-aside and the case was remanded to the Court of the learned Additional Chief Judicial magistrate, Rajsamand, to pass an appropriate order regarding the delivery of the amount after giving reasonable opportunity of hearing to all the parties concerned. The Court further directed that as the amounts have been

given to the petitioners, viz., Bheru Singh, Chawand Singh, Ashok Kumar, Dilawar Khan, Rana Jhuneja, Chand Mal and Kishan Lal, therefore, they should furnish a bank guarantee within a period of two weeks from the date of the order with the that in case the petitioners fail to prove the ownership of this amount then they shall pay the entire amount alongwith interest @ 12% per annum thereon from the date of the receipt of the amount, failing which steps will be taken for the recovery of the amount from these persons. The Single Bench further directed that if any part of the amount is found to be of either of these and some income tax is due thereon, then that should be paid to the Department. The Bank guarantee, as directed by this Court, was not furnished by the petitioners within the stipulated period of two weeks and the present miscellaneous petitions have been moved under Section 482 Cr.P.C. with the request that the petitioners are not in a position to furnish the bank guarantee and, therefore, the order may be modified and the petitioners may be permitted to give an adequate security to the satisfaction of the trial Court for re- payment of the amount with interest as directed by this Court.

3. It is contended by the learned Counsel for the petitioners that the direction was given by the Court to take the bank guarantee within the period of two weeks from the date of the judgment and the petitioners were not required to furnish the bank grarantee and as no notices were issued to the petitioners for furnishing the bank guarantee, therefore, as the time has now, been elapsed, the petitioners cannot be asked to furnish the bank gurarantee. The learned Counsel for the respondents, on the other hand, have submitted that the order is very much clear on the point and the petitioners were asked to furnish the Bank guarantee, which they have not furnished so far and, therefore, the amount can be recovered from the petitioners in accordance with law, as directed by the learned Single Bench.

4. I have considered the submissions made by the learned Counsel for the parties.

5. The order regarding participation in the proceedings pending before the learned Additional Chief Judicial Magistrate and regarding disposal of the amount recovered from the petitioners during the investigation, is not subject to the furnishing of the Bank guarantee and they can participate in the proceedings even without furnishing the bank guarantee and the learned Additional Chief Judicial

Magistrate, Rajsamand, should in accordance with law with the enquiry regarding disposal of the property and pass an after giving an opportunity of hearing to all the parties, but so far as furnishing of the bank guarantee and the recovery of the amount is concerned, the order is very much. The petitioners were required to furnish the bank guarantee within a period of two weeks from the date of the order and no further notices were required to be given to then and as they have not furnished the bank guarantee within the stipulated period of two weeks from the dale of the order, as such the State Government is free to recover the amount from the petitioners in accordance with law, as per the directions given by the Single Bench of this Court vide order dated 18-5-92. In the judgment dated 18-5-92 this Court has already protected the rights of the Income Tax Department by observing that if any part of the amount is found of either of these parties and if income-tax is due from these persons then that should be paid to the Income Tax Department after deducting it the amount and no further order to safe-guard the interest of the Income Tax Department is required to be passed nor this Court, in its jurisdiction under Section 482 Cr.P.C. can modify the order which was passed by a Single Bench of this Court.

6. In this view of the matter, I do not find any merit in these miscellaneous petitions and the same are hereby dismissed. The trial Court is directed to expedite the enquiry and dispose it of as early as possible.

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