

IN THE COURT OF THE SESSIONS JUDGE : KAMRUP(M)

AT GUWAHATI

Present: Md. M. Ahmed,
Sessions Judge,
Kamrup(M), Guwahati.

Criminal Revision No. 07 of 2017

The appeal has been filed challenging the order dated 23.12.2016 passed by the learned S.D.J.M. No.1, Kamrup (M) at Guwahati, in G.R. Case No. 6669/2008, under Section 392 of IPC.

Shri Ram Avatar Agarwalla

..... **Petitioner**

- Vs -

The State of Assam

..... **Respondent**

Date of Argument : 06.03.2017

Date of Judgment : 16.03.2017

Advocates who appeared in this case are:

Mr. N. Alam : Learned Advocate for the petitioner.

Sri H.K. Deka : Learned Public Prosecutor.

J U D G M E N T

1. This order stems out from an application filed U/S 397 of Cr.PC R/W section 399 of Cr.PC by petitioner Sri Ram Avatar Agarwala S/O Late Prakash Chand Agarwala, Resident of Narayan Nagar, Guwahati-9, Guwahati, Assam

who has impugned the order dated 23.12.2016 passed by the learned court of S.D.J.M. No. 1, Kamrup (M), Guwahati whereby the learned trial court has rejected the prayer of the revision petitioner for depositing Zimma money in his bank account in view of demonetization of old currency notes on 08.11.2016 announced by the Govt. of India. According to the revision petitioner on 19.09.2008, the staff members namely Ram Narayan Pandey and driver Mithilesh Rai were carrying an amount of Rs.35,00,000/- (Rs. Thirty five lakhs) in cash, by travelling in an Indica vehicle bearing registration No. ML-10-4468. The said amount was looted by some bandits enroute at around 6.45 PM near Jorabat. Thereafter, revision petitioner Ram Avatar Agarwala has claimed to have lodged an FIR at Basistha PS on the same day upon receipt of which Basistha PS registered a case vide Basistha PS case No. 493/2008, U/S 392. It is the further case of the revision petitioner that police officials during investigation relating to the aforementioned PS Case, arrested some culprits allegedly involved in such highway robbery and they were forwarded to learned court through forwarding letter dated 21.09.2008. The revision petitioner has claimed that he through its Director has come to know that the police officials of Basistha PS during investigation seized an amount of Rs. 9,57,500/- (Rs. Nine lakhs Fifty seven thousand five hundred) from the accused persons. Copies of the seizure lists dated 27.09.2008, 27.09.2008, 07.10.2008, 11.10.2008 and police report dated 15.09.2012 are all placed before this court.

2. I have perused all these documents. It is further claimed by the revision petitioner that earlier one zimma petition was filed by the informant. Thereafter, the learned Trial Court vide order dated 12.10.2012, was pleased to pass a direction to the I/O of the instant case to give the interim custody of the seized money to the tune of Rs. 9,57,500/- (Rs. Nine lakhs Fifty seven thousand five hundred) by noting the currency nos of the seized money as the seized money was deposited at State Treasury by the I/O and the same was in the custody of the Govt. of Assam. The informant /petitioner was given interim custody of the seized amount without noting the currency nos. Subsequently, the investigation report revealed that the said seized money the interim custody of which was given, to the informant was not required for further investigation and it is reflected in the order dated 12.10.2012. A copy of the said order is placed before this court.

3. I have perused the same. Now the revision petitioner has claimed that he has not used the said amount in due compliance of the order of the learned Trial Court. The same remained in the custody of the petitioner in old Rs. 500/- (Rs. Five hundred) Rs.1000/- (Rs. One thousand) denominations after demonetization of the old currency notes of denomination of Rs. 500/- (Rs. Five hundred) and Rs.1000/- (Rs. One thousand) since 08.11.2016, the said zimma money given in the interim custody of the petitioner are now lying idle, and this has no value after expiry of the period of demonetization order issued by the Govt. of India. In view of stipulated period for depositing of old high denominations currency within 30.12.2016, the custody of the seized amount now lying with the petitioner with old currencies will be futile and if, it is contended, the seized amount is not deposited in the bank account of the petitioner, the entire amount in the interim custody will lose its value. Even keeping custody of the same shall be in violation of the Govt. of India directives. As such, the revision petitioner has prayed to this court for allowing him to deposit the entire amount now lying idle in custody of the petitioner in his bank account and if it is not permitted by this court, his entire hard earned money will lose its value. This case record has further revealed that on 20.02.2016, one of the Directors of Meghalaya Steels Ltd. Sri Rahul Lohia filed a petition vide petition No. 2647/16 dated 20.12.2016 praying to allow him to deposit the zimma money to its bank account ; but the prayer was rejected by the learned Trial Court. Thereafter, the informant of the case again filed a petition vide No. 2696/16 dated 23.12.2016 before the learned Trial Court but it was again rejected by the learned Trial Court. The revision petitioner feels highly aggrieved and dissatisfied with the impugned order dated 23.12.2016 passed upon petition No. 2696 by the learned Trial Court in connection with Basistha PS Case No. 493/2008 and he has challenged the same on various grounds. According to him, the learned Trial Court has committed error both in law or facts at the time of passing of the order. It is contended that the learned trial court has failed to apply its judicial mind and has further failed to appreciate the materials in record and does arrived at erroneous decision. It is further contended that the learned Trial Court below has passed the impugned order dated 23.12.2016, without considering the facts and circumstances that surfaced subsequently, in terms of demonetization notification dated 08.11.2016 issued by Govt. of India rendering the seized and zimma of the currency note has invalid.

4. I have considered the submissions and counter submissions of the learned counsel so advanced before this court at final hearing of this revision. Upon attentive perusal of called for case record, it has appeared that one Ram Avatar Agarwal lodged an FIR before in-charge of Jorabat PS with allegation that a huge amount of

money which staff members were carrying in a vehicle was looted away by some miscreants on 19.09.2008 at about 6.45 PM. This case record has further revealed that during course of investigation total amount of Rs. 9,57,500/- (Rs. Nine lakhs Fifty seven thousand five hundred) were seized from the suspected looters vide seizure list. Subsequently, entire zimma of the seized money was given in favour of the informant. However, on 20.12.2016 one Rahul Lohia moved a petition as authorized Director of Meghalaya Steel Ltd. Company seeking permission of the court to deposit the seized amount. The case record has further revealed that the learned Trial Court vide order dated 21.12.2016 turned down the prayer of the petitioner on the ground that the name of Company Meghalaya Steel Ltd. was nowhere found either in the FIR or in the entire case record or in the CD. Subsequently, the informant himself filed a petition with a similar prayer and this time the learned Trial Court vide impugned order has observed that there is no change of circumstance in the case in hand to pass further order altering the order dated 12.10.2012. It appears that the learned Trial Court has not taken into account the change of the circumstances that occurred after announcement of invalidating old denominations of Rs. 500/- (Rs. Five hundred) Rs.1000/- (Rs. One thousand) notes by the Govt. of India. The plea of the revision petitioner is that he kept the said amount in his custody ; but now as because demonetization has come into effect, it is now necessary to deposit the said amount in his bank account. The learned Trial Court in the order dated 23.12.2016, has observed that vide order dated 12.10.2012 his learned predecessor was pleased to direct the informant petitioner not to dispose of the seized money until further order of the court. So the petitioner cannot be faulted with for possessing the said amount till date. As according to the revision petitioner the Reserve Bank of India will not accept the demonetized rupees after expiry of 31.03.2017. Under such circumstances this court deems it proper to direct for deposit of the entire amount in Reserve Bank of India, Panbazar, Guwahati Branch.

5. It is further directed that the learned Trial Court shall dispose of the prayer of the revision petitioner to deposit the said amount in his account so that the money could be circulated. Revision petitioner is hereby directed to appear before the learned Trial Court on 17.04.2017 and on his appearance the learned Trial Court shall hear the matter afresh by giving opportunity to both the sides to place their respective submissions.

6. Having found merit, this revision stands allowed.

7. The impugned order is hereby set-aside, with a direction to the learned Trial Court to reconsider the matter in the light of change of circumstances after

declaration of demonetizing certain denomination of notes and it shall dispose the matter in accordance with law.

- 8.** This revision petition stands disposed of on its merit.
- 9.** Return the LCR along with a copy of this judgment to the learned court below.
- 10.** Signed, sealed and delivered in the open court on this 16th day of March, 2017 at Guwahati.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)
Sessions Judge,
Kamrup(M), Guwahati