

ORDER BELOW EXH. 24

This application is filed by the applicants i.e. the accused persons namely 1) Dinesh Prakash Jadhav and 2) Arvind @ Shersingh Khandu Rathod, for interim custody of seized currency notes of total amount of Rs. 4,50,000/- (In words four lacks fifty thousand only) which has been seized by Dhanaj Police Station in connection with Cr. No. 348/2020 for the offence punishable under Section 392 read with Section 34 of Indian Penal Code (Herein after referred as "IPC").

2. It is contention of the applicants that, the police Station Dhanaj has registered offence punishable under Section 392 of Cr. P. C. vide crime No. 348/2020 against the applicants. During investigation police have seized the amount of Rs. 4,50,000/- from applicants. Said amount is exclusively owned and belongs to the applicants. The applicants are falsely involved in the crime. They were doing labour work of sugarcane cutting. The informant/complainant Chidanand is also doing business relating to sugarcane. One Sanjay Shinde was mediator between the applicants and informant. Chidanand i.e. the informant was trying to recover his business losses from Sanjay Shinde. Therefore, the informant in collusion with Sanjay Shinde lodged false report against the applicants and the police seized an amount of Rs. 4,50,000/- from the applicants.

3. The applicant No. 1 is farmer. He had sold his cotton on 02/12/2020 worth Rs. 1,87,493.75/-. The police have seized Rs. 13,000/-

in addition to the amount received by applicant from sale of cotton on 03/12/2020. The wife of applicant No.2 had sold her field property of Rs. 3,00,000/- on 10/01/2020 said amount was in hand of the applicant No. 2. The police have seized Rs. 4,50,000/- from the applicants No. 1 and 2 out of the above funds. The police have also prepared false panchanama and the applicants were compelled to sign the blank paper for preparation of false documents. The complainant and police have also replaced the currency notes in order to avoid the rival claims. The applicants were in custody of police and they had no voice at that time. Thus, out of the total seized amount, Rs. 2,00,000/- belongs to the applicant No. 1 and Rs. 2,50,000/- belongs to the applicant No. 2. Hence, they prayed for the interim custody of the seized amount on indemnity bond.

4. Say of the informant, I.O. and Learned A.P.P. was called. I.O. submitted his say at Exh. 27 that during the investigation seized amount was recovered from the applicants. Accordingly seizure and memoradam panchanamas were executed. Bundle of currency notes bears the label of Axis Bank, Vizapur Road, Solapur. He further submitted that, it is revealed from the investigation that the seized amount belongs to the complainant Chidanand and prayed for rejection of the application. Learned A.P.P. strongly opposed the application and submitted in her say that the offence is of serious nature. There is no proof filed on record by the applicants regarding their ownership to the muddemal. Receipts of cotton sale are also not filed on record. Hence, she prayed for rejection of the application.

5. On behalf of the complainant i.e. Chidanand, his learned Advocate filed his say and opposed the application. He submitted that, say of the IO and chargesheet shows that, the amount belongs to the informant. The application is devoid of merit. The applicants have suppressed the material facts. The informant has also filed the application for claiming the seized amount. Hence, he prayed for rejection of the application.

6. Perused the record. Heard learned advocate for the applicants, objector i.e. the complainant Chidanand and the learned A.P.P. The applicants in support of their claim have not placed any document on record with the instant application. However record shows that, in the earlier application in Cr. M. A. No. 41/2021, they had filed copy of invoice of Cotton Corporation and copy of sale deed executed by the wife of applicant No. 2. After giving exhaustive considerations to claim and relevant documents filed by the applicants, earlier applications of both the parties were rejected by this court.

7. I have also carefully perused the chargesheet, application and say of both the informant, I.O. and of the learned A.P.P. It is admitted position that both the parties have claimed the seized amount. Perusal of the seizure panchnamas filed in chargesheet, it ravel that the amount was recovered from the applicant no. 1 and 2. Say of the investigation officer shows that it is transpired in investigation that the seized amount belongs to the informant and it was withdrawn from Axis Bank, Vijapur road,

Solapur. The bundles of currency notes also bear the rappers of Axis Bank, Vijapur road, Solapur.

8. Whereas, pertaining to the source and accounts of the amount, in earlier application, the applicant no. 1 had produced the invoice of the cotton corporation of India. It appears from said invoice that, the owner of the said cotton was one Sitaram Mansing Rathod. The accused no. 1 has nowhere explained his relationship with the owner of cotton and how that amount was came in his hands. The accused no. 2 has contended that the properly was sold by his wife on 10/01/2020. The instant seizure panchnama was executed on 05/12/2020. Thus considering the contention of accused no. 2 and gap of time between the sale transaction and seizure of the amount from accused persons, it cannot be ordinarily believed that the cash received from said sale was in hands of the accused no. 2 even after such long time. Thus contentions of the accused persons regarding their possession of the seized amount prior to the offence do not appear probable.

9. Though, these applicants have contended that their blank signatures were obtained and currency notes were replace by the police during the investigation, but till filling of the earlier application by the informant, the accused persons did not complained about these alliteration to the court or any other appropriate authority. Also no supporting evidence to this contention at this stage is available on record. Hence this plea of the accused also appears to be afterthought.

10. As per judgment relied upon by the informant, the Hon'ble Bombay High Court in the case of Anuj s/o Shyam Agarwal Vs. State of Maharashtra (Criminal Writ Petition No.978 OF 2017) it is necessary for this court to decide that out of both claimants whose claim is more probable. As discussed above, contentions of the applicants do not appear probable. Hence, the applicants i.e. the accused persons have not made out the case to hand over the custody of seized amount to them. Hence, in the result following order is passed:-

ORDER

The application stands rejected.

Karanja.
Date: 17/01/2022

(K. K. Chaudhari)
Judicial Magistrate First Class,
(Court No. 2), Karanja,
Dist. Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. File Order are same word to word, as per the original Order.

Name of Stenographer	:	R. A. Charthal (Steno. L.G.)
Court Name	:	Jt. J.M.F.C. & Civil Judge, Karanja
Date	:	17/01/2022
Presiding Officer on	:	17/01/2022
Order uploaded on	:	18/01/2022