

*** HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

+ WRIT PETITION No.35167 of 2023

% Date: 22.02.2024

Between:

Neena Kamlesh Shah.

... Petitioner

AND

The Station House Officer,
Waddepally Police Station, Nalgonda District
and others.

... Respondents

! Counsel for the Petitioner : Sri Vedula Venkata Ramana
learned Senior Counsel for
M/s. Bharadwaj Associates

^ Counsel for Respondents : Government Pleader for Home

> HEAD NOTE:

? Cases referred

1) 2020 SCC OnLine TS 3047

2) (2012) 6 SCC 760

HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.35167 of 2023

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“...to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the respondent police and registering the Crime in F.I.R.No.216 of 2023 dated 15.10.2023 (in the Court of the II Additional Judicial First Class Magistrate, Miryalaguda) without any substantial penal provisions indicated therein, is arbitrary and illegal and contrary to the law laid down by the Supreme Court in 1982 (1) page 561 para 21 and 65 and resultantly quash the said F.I.R. and direct the respondent police to return the seized cash of Rupees 3 Crores and 4 Lakhs to the petitioner and grant such other relief as it deems fit in the circumstances of the case.”

2. The petitioner claims to be owner of Cash of Rs.3,04,00,000 (Rupees three crores four lakhs) which was transported in KIA Car bearing No.TS 10 FD 0643 on 15.10.2023 and the Respondent No.1, intercepted the movement of the said car and seized the said cash under a cover of panchanama and thereafter, a case in Crime No.216 of 2023 was registered against Vipul Kumar Bhai and Amarsinh Zala, for the offences under Sections 336 IPC, 102 Cr.P.C, 179 r/w 52 r/w 177 of the Motor Vehicles Act, 1988 (for short “M.V.Act”). The case of the petitioner is that alleged offence under Section 336 IPC relates to rash and negligent driving only and there is no penal provision prohibiting transportation of cash whatsoever denomination. Therefore, the petitioner prayed this Court to quash the said FIR and return the cash to her.

3. This Court vide order dated 12.01.2024 while issuing notice to the respondents, in view of the judgment of the Division Bench of this Court in ***Mectec vs. Director of Income Tax Investigation***¹ granted interim direction to the respondent-police to release the seized cash of Rs.3,04,00,000/- in F.I.R.No.216 of 2023 dated 15.10.2023 to the petitioner, pending disposal of the writ petition.

4. The Circle Inspector of Police, Miryalaguda Rural Circle, Nalgonda District, filed counter affidavit on behalf of respondents, *inter alia* stating that on 15.10.2023 at 08:29 hours, while he was present in the Police Station, Sri K.Naresh Kumar, Sub-Inspector of Police of Madgulapally Police Station, Nalgonda District, along with other staff, came to Police Station and lodged a complaint, which reads as follows:

“On 15-10-2023 at 05.30 hours while he along with staff were conducting the vehicle checking at NAM Toll Plaza in the outskirts of Madgulapally village in view of Assembly Elections-2023. In the mean time one KIA car bearing No. TS 10 FD 0643 was proceeding towards Miryalaguda from Nalgonda. Accordingly, they tried to stop the said vehicle for check, but driver of the said vehicle drove the vehicle with high speed in suspicious manner. As such, complainant chased the said vehicle at Interstate Border check post at Wadapally village and detained the driver and one other person. On his enquiry they disclosed their details as, 1) Vipul Kumar Bhai, aged 46 years, Occ: Driver, R/o Musheerabad, Native of Amhadabad, Gujarath State, and 2)Amarsinh Zala, aged 52 years, Occ: Driver, R/o Mahesena, Gujarat State and also he found Rupees 3.04 core in their possession. They didn't have any

¹ 2020 SCC OnLine TS 3047

relevant documents pertaining to the cash. As such the complainant conducted seizure in presence of the two mediators and seized 3.04 core rupees and one vehicle bearing No. TS10 FD 0643 under cover of panchanama. Hence requested for taking necessary action into the matter.

Basing on the above written report and seizure Panchanama, he registered a case in Crime No.216/2023, for the offences under Sections 336 IPC, 102 Cr.P.C., 179, 52 r/w 177 of Motor Vehicles Act, on 15.10.2023 at 08:29 hours. It is further stated that as per the investigation done and as per the record, he intimated to the Returning Officer (Revenue Divisional Officer, Miryalaguda) about registration of Crime and seizure of cash, on 19.10.2023 and submitted requisition to the II Additional Judicial First Class Magistrate, at Miryalaguda on 19.10.2023 to accord permission for depositing seized amount through Form No.60 and the learned Magistrate vide Docket Order dated 19.10.2023 directed to deposit the cash before the District Collector as the cash has been seized during the Election Code in operation. Subsequently, the seized cash was deposited with the District Treasury Officer, Nalgonda on 20.10.2023 and the Sub-Treasury Officer has issued Receipt No.211, dated 20.10.2023. Thereafter, the C.I. of Police addressed a Letter dated 20.10.2023 requesting the Income Tax Officer, Nalgonda to take necessary action on the seized amount. In pursuance of the said letter, the Income Tax Officer, Ward-I & District Nodal Officer, Nalgonda vide letter dated 25.10.2023 informed that he was

authorized by the Principal Director of Income Tax, Hyderabad, to seize the cash and requested to hand over the cash. Based on the said letter, the C.I. of Police vide letter dated 25.10.2023 requested the District Treasury Officer, Nalgonda to hand over the seized cash for onward transmission to the Income Tax Department. On 26.10.2023, Income Tax Officer, Ward-I, Nalgonda along with Warrant of Authorization under Section 132 of Income Tax Act, 1961 (for short "I.T.Act") dated 23.10.2023 and two panchas visited the District Treasury Office, Nalgonda, prepared Inventory of Cash of Rs.3.04 crore and seized the same under cover of Panchanama and handed over copy of Panchanama. It is further stated that in compliance with the interim orders passed by this Court, the C.I. of Police addressed a letter dated 27.01.2024 to the Income Tax Officer, Ward-I, Nalgonda, informing about the interim orders passed by this Court. Thereupon, the Income Tax Officer, Ward-I, Nalgonda addressed a letter dated 29.01.2024 to the Deputy Director of Income Tax-I(2), Aayakar Bhavan, Hyderabad. On 30.01.2024, the C.I. of Police addressed another letter requesting the Income Tax Officer, Nalgonda to inform about the action taken for releasing the seized cash, as directed by this Court. Pursuant to the said letter, the Income Tax Officer, Ward-I, Nalgonda has again addressed letter dated 30.1.2024 to the Deputy Director of Income Tax-I (2), Aayakar Bhavan, Hyderabad. In response to the letter dated 30.01.2024

addressed by the C.I. of Police and the letter dated 30.01.2024 addressed by the Income Tax Officer, the Deputy Director of Income Tax (Inv), Unit-1(2), Hyderabad has issued a Letter bearing F.No.DDIT(Inv)/Unit-I(2)/Misc/2023-24, dated 31.01.2024 to the Circle Inspector of Police, Miryalaguda Rural, Nalgonda District, stating that seizure of amount of Rs.3,04,00,000/- which was found in the vehicle bearing No.TS 10 FD 0643 belongs to Shivam Modi. Subsequently, summons under Section 131 of I.T.Act were issued to the parties along with the vehicle owner Shivam Modi to explain the source for the seized cash of Rs.3,04,00,000/-. The parties neither complied with the summons nor submitted any details/documentary evidence to substantiate the source for the cash found in their possession. In absence of any documentary evidence, the cash of Rs.3,04,00,000/- was requisitioned from the police authorities by executing warrant of authorization under Section 132A of I.T.Act on 26.10.2023. On the same day i.e, on 26.10.2023, the seized cash was deposited in the PD account of the Principal Director of Income Tax, Hyderabad and Form TR-6 has been obtained in the name of Sri Vipul Kumar Ramanlal Patel and Sri Amarsinh Zala. It is further stated in the counter affidavit that during the post search proceedings, the assesseees were given another opportunity vide summons under Section 132 of I.T Act dated 29.11.2023 and 30.12.2023 to explain the source for the cash found in their

possession. However, the assessee has not availed any opportunities given and hence the cash found in their possession is treated as unexplained money. Accordingly, the report in that regard was forwarded to the Jurisdictional Assessing Officer on 08.01.2024 for completing further proceedings in the case of Sri Vipul Kumar Ramanlal Patel and Sri Amarsinh Zala as per the provisions of I.T. Act. It is further stated in the counter affidavit that since the amount seized by the respondents-police while intercepting the vehicle bearing No.TS 10 FD 0643 was handed over to the designated Nodal Officer as per the Standard Operating Procedure (SOP) for seizure and release of cash and other items issued by the Election Commission of India vide No.464/Seizure/GE-Las/2021/EEPS dated 19.08.2021, now the amount has been kept in the PD Account of the Principal Director of Income Tax, Hyderabad. It is further stated that they have already issued notices as required under Section 41A Cr.P.C to the drivers of the vehicle and other accused in Crime No.216 of 2023 and recorded their statements in the presence of mediators. It is also stated that both the accused confessed that Modi Shivam is the owner of the crime vehicle and they are working under him as drivers for a monthly salary and were transporting the cash of Rs.3.04 Crores to Chennai. It is further stated that respondents have followed the SOP issued by the Election Commission of India and also obtained the permission from the

concerned Court under Section 102 Cr.P.C and the seized cash was already deposited with the Income Tax Department and notices under Section 131 of I.T. Act were also issued and after conducting enquiry it was found that seized cash is an unexplained money and therefore, the respondents prayed this Court to vacate the interim order dated 12.01.2024 passed by this Court and ultimately, dismiss the writ petition.

5. Sri Vedula Venkata Ramana, learned Senior Counsel representing M/s.Bharadwaj Associates, for the petitioner has submitted that the amount seized by the police under cover of panchanama is totally unauthorised and there is no penal provision prohibiting the transfer of cash whatsoever denomination. It is further contended that as per Section 102 Cr.P.C, any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Such police officer, if subordinate to the officer-in-charge of a police station, shall forthwith report the seizure to that officer. Every police officer acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in

police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. It is further submitted that the respondents having seized the cash of the petitioner from the car unauthorisedly, has not deposited the same into the Court by following the procedure prescribed under Section 102 Cr.P.C. As such withholding of the cash by the respondents is illegal and unauthorised. It is further submitted that since the offences alleged against the petitioner is only relating to negligent driving and violation of provisions of Motor Vehicles Act, the respondents-police are not having any power or authority to seize the cash as no offence has been committed and carrying the cash does not amount to any offence. The learned Senior Counsel has relied upon the decision of the Division Bench of this Court in ***Mectec vs. Director of Income Tax Investigation*** (supra) and submitted that Section 132 of I.T.Act deals with procedure for search and seizure of cash or gold or jewellery or other valuable things. The said Section contemplates that the competent authority in consequence of information in his possession must have 'reason to believe' *inter alia* that a person is in possession of cash etc., and such cash represents either wholly or partly income which has not been or would not be disclosed for the

purpose of the Act and he may authorize another Officer of the Department lower in rank to enter and search any building etc., where he has reason to suspect that books of account or other documents, money, bullion, jewellery or other valuable article or thing are kept and seize the same. It is further submitted that there were no circumstances existing for the Principal Director of Income Tax (INV), Hyderabad to issue any warrant for search or seizure under Section 132 of the Act, when the cash had been handed over to the Income Tax Department by the Task Force Police on 26.10.2023 and therefore the seizure of the cash from the petitioner by the respondents and its retention till date by them is *per se* illegal. The learned Senior Counsel further submitted that under the guise of implementing electoral restrictions, the trading activities of tradesmen and the normal pursuit of life by the citizens are brought under the control of the Election Commission of India. It is contended that implementation of the impugned instructions amounts to violation of fundamental rights guaranteed under Articles 19(1)(d) and 19(1)(g) of Constitution of India. According to the learned Senior Counsel, for mere possession of money or goods in trade, an F.I.R cannot be lodged. It is further submitted that there is no acceptable manner of procedure contemplated to ascertain the purpose of the seizure or for its return. Thus the learned Senior Counsel prayed this Court to declare the action of the respondents in

registering the Crime No.216/2023 and seizing the cash of the petitioner under cover of panchanama and retaining the same till date as arbitrary, illegal and consequently, direct the respondents to release the cash to the petitioner forthwith. In support of his submissions, the learned Senior Counsel relied upon the decision of Hon'ble Supreme Court in ***M.T.Enrica Lexie and another vs. Doramma and others***².

6. Per contra, the learned Government Pleader for Home appearing for the respondents has submitted that the respondents have strictly followed the Standard Operating Procedure (SOP) for seizure and release of cash and other items issued by the Election Commission of India by exercising the power under Article 324 of the Constitution of India. It is further submitted that as per the SOP, the seized cash was already deposited with the Income Tax Department and the Income Tax Department by following the procedure has issued notice under Section 131 of I.T.Act to the parties to explain the source for the seized cash of Rs.3,04,00,000/-. The parties neither complied with the summons nor submitted any details/documentary evidence to substantiate the source for the cash found in their possession and hence the cash found in their possession is treated as unexplained money. There is no illegality or irregularity in the action of respondents warranting interference by

² (2012) 6 SCC 760

this Court under Article 226 of the Constitution of India. The present writ petition is misconceived and ultimately prayed to dismiss the writ petition.

7. This Court has carefully considered the submissions of the respective counsel and perused the record.

8. It is the case of the petitioner that respondents without having any power or authority have seized the cash from the vehicle bearing No.TS 10 FD 0643, which is illegal, arbitrary and unauthorized. It is further case of the petitioner that respondents have not followed the procedure as contemplated under Section 102 Cr.P.C and reported the seizure to the concerned Magistrate. It is also case of the petitioner that the act of respondents-police in seizing the cash from the said vehicle is illegal and they are not having any power or authority to seize cash and inform the same to the I.T. Department. It is further case of the petitioner that soon after the completion of Election Code, the respondents ought to have returned the cash to her. It is further contended that depositing the amount with the I.T Department amounts to unauthorisedly exercising the power and if any person is having unexplained money, the I.T Department has to take appropriate action during the period of relevant assessment year but they cannot seize the amount from the possession of the petitioner or third party at the instance of the respondents-police

and thereafter initiate an enquiry, which is unknown to procedure. Therefore, the petitioner sought to quash the FIR No.216/2023 and consequently, direct the police to return the cash to her.

9. Whereas the case of the respondents is that Election Commission of India while exercising the powers under Article 324 of the Constitution of India vide No.464/Seizure/GE-Las/2021/EEPS dated 19.08.2021 has issued instructions to the Chief Electoral Officers of all the States prescribing the Standard Operating Procedure for seizure and release of cash and other items during currency of elections and subsequent letters issued after completion of elections regarding release of cash and articles seized during elections having no link with any candidate/his or her agent/party worker, where no FIR has been lodged or not handed over to the Income Tax Department. Following the circular instructions issued by the Election Commission of India, during the Election Code in operation in the State of Telangana, the respondent No.1 seized the cash from the vehicle bearing No.TS 10 FD 0643 on 15.10.2023 at 5:30 hours under cover of panchanama and registered a case in Crime No.216/2023 for the offences under Sections 336 IPC, 102 Cr.P.C., 179, 52 r/w 177 of M.V.Act. Soon after seizure of the cash, the concerned police filed a requisition before the II Additional Judicial Magistrate of First Class, Miryalaguda, and the said Court vide docket order dated 19.10.2023 directed to deposit the seized

cash before the District Collector as the cash has been seized during the Election Code in operation. Subsequently, the seized cash was deposited with the District Treasury Officer, Nalgonda on 20.10.2023 and the Sub-Treasury Officer has issued Receipt No.211, dated 20.10.2023. After following the procedure prescribed by the Election Commission of India, the seized amount was deposited with the Income Tax Department. Thus it is the case of the respondents that they have followed the procedure prescribed by the Election Commission of India and therefore, there is no illegality in seizing the cash and depositing the same with the Income Tax Department.

10. Before going into the factual aspects of the matter, it is necessary to discuss the powers of Election Commission of India to issue Model Code of Conduct/Standard Operating Procedure for seizing of the cash, distribution of cash or liquor or any other item during the election period. It is settled preposition of law that the general power of superintendence, direction, control and conduct of election is vested in the Election Commission under Article 324 of the Constitution of India. The words superintendence, control, direction as well as conduct of all elections are broadest terms. Article 324(1) of the Constitution of India, confers residual power to the Commission relating to the electoral process and it empowers the Commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections and for this purpose,

Article 324(1) is to be construed liberally. Apart from the powers conferred by the Representation of Peoples Act, 1951 and the Rules made thereunder, the Election Commission has ample power under Article 324(1) itself to make appropriate orders as to the conduct of election. Hence, the Election Commission has powers to issue directions in the process of conducting elections to the effect that the political parties shall submit to the Commission for its scrutiny the details of the expenditure incurred or authorized by the political parties in connection with election of their representative candidates.

11. The Election Commission of India while exercising such powers has issued instructions from time to time to the Chief Electoral Officers of all the States/Union Territories, for conducting smooth, free and fair elections which is the basic element to elect democratic form of Government uninfluenced by any sort of undue influence. The Election Commission of India while exercising the powers under the provisions of Representation of Peoples Act, has issued Standard Operating Procedure for dealing with unaccounted cash and other valuables. According to the instructions, if cash is being carried with proper documents or if it is for any other purpose and the person carrying those valuables satisfies the officers conducting the search and seizure, then those valuables shall be returned to the owner forthwith. It is well settled law that the duty of the Election Commission, *inter alia*, is to prevent distribution of money to the

public and the Commission should take all steps to curb those activities. The election being a very important event for the State, the Election Commission has to maintain law and order to ensure free and fair election and also curb the malpractices. In view of the powers being conferred on the Election Commission of India under Article 324 of the Constitution of India and also Representation of Peoples Act, 1951, this Court is of the opinion that prescribing the Standard Operating Procedure by the Election Commission of India does not amount to violation of any fundamental rights guaranteed under Article 19(1)(d) and 21 of the Constitution of India. Admittedly, in this case, the respondents have seized the cash of Rs.3,04,00,000/- from the vehicle bearing No.TS 10 FD 0643 and obtained necessary permission from the concerned Magistrate under Section 102 Cr.P.C and by following the circular instructions issued under Clause 16 of the Standard Operating Procedure by the Election Commission of India, has deposited the seized amount with the Income Tax Department. Clause 16 of the order dated 29.05.2015 vide File No.76/Instructions/EEPS/ 2015/Vol-II issued by the Election Commission of India, reads as follows:

16. Release of Cash

(i) In order to avoid inconvenience to the public and genuine persons and also for redressal of their grievances, if any, a committee shall be formed comprising three officers of the District, namely, (i) CEO, Zila Parishad/CDO/P.D.DRDA (ii) Nodal Officer of Expenditure Monitoring in the District Election Office (Convenor) and (iii) District Treasury Officer.

The Committee shall suo-motu examine each case of seizure made by the Police or SST or FS and where the Committee finds that no FIR/Complaint has been filed against the seizure or where the seizure is not linked with any candidate or political party or any election campaign etc., as per Standard Operating Procedure it shall take immediate step to order release of such cash etc., to such persons from whom the cash was seized after passing a speaking order to that effect. The Committee shall look into all cases and take decision on seizure.

(ii) The procedure of appeal against seizure should be mentioned in the seizure document and it should also be informed to such persons at the time of seizure of cash. The functioning of this committee should be given wide publicity, including telephone no. of the convenor of the Committee.

(iii) All the information pertaining to release of cash, shall be maintained by the Nodal Officer expenditure monitoring in a register, serially date wise with the details regarding amount of Cash intercepted/seized and date of release to the person(s) concerned.

(iv) If the release of cash is more than Rs 10 (Ten) Lac, the nodal officer of Income Tax shall be kept informed before the release is effected.

12. Since the respondents have followed the Standard Operating Procedure for seizure and release of cash and other items prescribed by the Election Commission of India and informed the seizure of the cash to the Income Tax Department vide letter dated 20.10.2023 and the Nodal Officer/Income Tax Officer, Ward-I, who has been authorized by the Principal Director of Income Tax, Hyderabad, has seized the cash under a cover of panchanama and also issued notices under Section 131 of I.T.Act to the owner of the crime vehicle from where the alleged cash was seized and as the Income Tax Department has followed the procedure contemplated under Sections

131 and 132 of I.T.Act, there is no illegality in seizure of cash and depositing the same in the P.D. Account of the Principal Director of Income Tax, Hyderabad.

13. The learned Senior Counsel appearing for the petitioner has placed much reliance on the decision of Hon'ble Supreme Court in ***M.T.Enrica Lexie and another vs. Doramma and others*** (supra). In the instant case, respondents have followed the procedure in seizing the cash during the Election Code in operation and thereafter, reported to the concerned Magistrate under Section 102 Cr.P.C and obtained necessary permission. Therefore, the aforesaid judgment relied upon by the petitioner is not applicable to the facts of the case.

14. In the case of ***M/s.Mectec vs Director of Income Tax*** (supra), relied upon by the learned Senior Counsel for petitioner, the Division Bench of this Court directed to release of the amount which was seized on the information being furnished to the task force of the Income Tax Department under Section 132 of the I.T. Act as it was unaccounted money. It was further held that the Income Tax authorities are not having any power for issuance of warrant of attachment of the seized cash. Challenging the judgment rendered by the Division Bench of this Court, a Special Leave to Appeal (C) No.2049/2021 was preferred on the file of Hon'ble Supreme Court

and the Hon'ble Supreme Court vide order dated 31.08.2021 has granted stay of operation of the aforesaid judgment. Therefore, the decision in ***M/s.Mectec vs Director of Income Tax*** (supra), is not helpful to the case of the petitioner.

15. In the present case, the petitioner claims to be owner of the cash but the crime was registered against the drivers of the vehicle bearing No.TS 10 FD 0643 and the petitioner was not arrayed as accused in the subject Crime No.216/2023. Except claiming that she is the owner of the cash and that the respondents have unauthorisedly seized the cash, the petitioner has not placed any document in support of her contention that she is owner of the cash and that the respondents have unauthorisedly seized the cash. Further, the records reveal that respondents-police after registration of Crime No.216/2023 have followed the procedure under Section 102 of Cr.P.C and after obtaining necessary permission deposited the amount with the Nodal Officer and thereafter, the said amount was handed over to the Income Tax Department and notices were issued to the owner of the crime vehicle from where the amount was seized and the same was deposited in the P.D Account of the Principal Director of Income Tax, Hyderabad vide Form No.TR-6. In view of the same, as the petitioner is not arrayed as an accused and as the respondents have followed the procedure under Section 102 of Cr.P.C and also handed over the seized cash to the I.T Department

as per the SOP issued by the Election Commission of India, there is no illegality or irregularity in seizing the cash from the vehicle bearing No.TS 10 FD 0643.

16. For the aforesaid reasons, this Court is not inclined to quash the FIR No.216 of 2023 on the file of respondent No.1 and to grant the consequential relief of releasing the amount seized under cover of panchanama.

17. Accordingly, this Writ Petition is dismissed. Interim order dated 12.01.2024 granted by this Court stands vacated.

Miscellaneous petitions, if any pending in this writ petition shall stand closed. No order as to costs.

C.V. BHASKAR REDDY, J

Date: 22.02.2024

Note: L.R Copy to be marked: YES/NO
(b/o)
scs