

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.Rev.P.No.4/2012 & Crl.M.A.No.97/2012

% *Judgment reserved on :06th February, 2012*
Judgment delivered on:11th April,2012

AMOL TANAJI PATIL

..... Petitioner

Through : Mr.O.P.Wadhwa, Mr.Rajat
Wadhwa, Mr.Amreek Singh, & Mr.Devinder
Kumar, Advs.

versus

STATE

..... Respondent

Through: Mr.Naveen Sharma, APP for State
with Inspector Tilak Singh, police station
Ranhola, Delhi in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide instant petition, the petitioner has sought to set aside the impugned order dated 09.12.2011 passed by learned Additional Sessions Judge, Delhi whereby charge has been framed against petitioner as under:-

“That during the intervening period from 27.12.2009 till the date of arrest, you both entered into criminal conspiracy under Section 120B, 201 for the offences under Section 411 and 394 relating to the Sections 302/397 IPC and that you both thereby committed an offence punishable

under Section 120B 201 for the offences 411 and 394 relating to the Sections 302, 307 IPC and within the cognizance of this Court.”

2. Learned counsel for petitioner submits that the facts of the case in brief are that on 27.12.2009 at about 05:00PM, one Roshan Lal , jeweller of Kucha Mahajani, Chandni Chowk, Delhi was going towards Nangloi from Najafgarh, in his Maruti Swift car alongwith his servant Dhananjay Kumar. When they reached near Baprola School, the car was stopped by two boys namely Ravinder and Nikhil (absconder), who were on the motorcycle and on the point of fire arm, they robbed the suit case containing the jewellery and cash. Nikhil fired gunshot on the head of Roshan Lal and both of them ran away in the Swift car of Roshan Lal. Injured Roshan Lal was taken to Sanjay Gandhi Hospital, where he was declared as brought dead.

3. On the statement of Dhananjay Kumar, case was registered for the offences punishable under Section 394/397/302/34 Indian Penal Code, 1860 and Section 25/27 Arms Act, 1959 at police station Ranhola, Delhi.

4. During investigation, it is revealed as disclosed by accused Suresh @ Kala that they robbed gold jewellery from deceased Roshan Lal which was weighing about 01 KG. Thereafter, they got it melted from the shop of his cousin namely Praveen Kumar, who happens to be gold smith by profession. Thereafter, they made it into small sticks. After they got converted, these sticks into pure pieces of 24[^] by chemical process from Amil Tanaji Patil, the petitioner. In exchange

of this, petitioner received 40 Grams of pure gold as service/labour charges, without inquiring into the aspect of jewellery articles or whether obtained illegally or legally.

5. It is further alleged that petitioner sold this 40 grams of gold to various customers in the open market and received ₹ 1.00lac which was allegedly recovered from the house of petitioner.

6. Therefore, learned Trial Court framed the charges against petitioner for the offences punishable under Section 120B/201 Indian Penal Code, 1860 and also for the offence of Section 411/394 Indian Penal Code, 1860; relating to Section 302/397 Indian Penal Code, 1860 respectively by the impugned order dated 09.12.2011.

7. According to learned counsel for petitioner, learned Trial Judge erred in framing the charge against petitioner, particularly when the police failed to challan under the above provisions of Indian Penal Code, 1860, but allegations qua the present petitioner was only for offence under Section 411 Indian Penal Code, 1860, as per the report filed under Section 173 Cr. P.C.

8. Learned counsel submitted that the petitioner cannot be tried and held liable even for the offence under Section 411 Indian Penal Code, 1860 or 201 Indian Penal Code, 1860, when he was not found in possession of the stolen property nor he demolished the identity of the same. In fact, the identity of the alleged jewellery had already been demolished by accused Praveen Kumar by melting the same at the instance of other co-accused Suresh Kumar. The petitioner was brought

from Sonipat on 13.07.2011 and thereafter illegally detained till 15.07.2011 and his relatives were asked to deposit ₹ 1.00lac for his release.

9. Learned counsel submitted that three persons mentioned above, namely Nikhil, Ravinder and Suresh committed the robbery. Said Suresh @ Kala and co accused Praveen Kumar happens to be in close relation – melted the jewellery articles in the form of sticks. Thereafter, they brought these sticks to petitioner to be purified. Accordingly, said quantity found to be 800 Grams. He took only 40 Grams as labour/service charges; and thereafter, he sold it to various customers in the open market. It is not the case of the prosecution that the petitioner charged the amount for purification higher than the prevailing market charges. It is also not the case of the prosecution that the petitioner was known to the other co-accused persons. Therefore, he was in the conspiracy with the co-accused persons. Accused Nikhil is still absconding. Charges framed against the petitioner by learned Additional Sessions Judge, Delhi are bad in law. The petitioner cannot be held liable for the offences charged with.

10. I note that learned Additional Sessions Judge, Delhi has recorded in the impugned order that petitioner got converted gold sticks into pure gold form and took 40 grams as his labour/service charges. For his work, the reasonable belief against him with regard to the gold in question is that it might have been obtained from the illegal means, which indicates *prima facie* case against petitioner is made out.

11. I find no force in the view of learned Trial Court because of the fact that the petitioner could not be held liable for any of the offences alleged against him. Admittedly, he is not involved in the alleged robbery. He has not melted the robbed jewellery; therefore, he could not be held liable for receiving the stolen property. While purifying the gold sticks, he did not know that said gold was procured illegally by the accused persons. As a professional, he purified the gold weighing 800 Grams and took only 40 Grams of gold as labour / service charges. It cannot be established that he had knowledge about the said gold stick were converted from robbed jewellery. Even the case of the prosecution is that he did not enquire into the aspect of legality of that gold. Even to be held liable for the offence punishable under Section 411 Indian Penal Code, 1860, the person should have retained or received the stolen property, knowingly or having reasons to believe. The case would have otherwise, if the petitioner had melted the jewellery which is not the case against the petitioner.

12. For the reasons discussed above, petition is allowed.

13. Consequently, impugned order dated 09.12.2011 is set aside qua petitioner only. He stands discharged from all charges. His bail bonds stand cancelled. Surety stands discharged.

14. In view of above, Criminal M.A.No.97/2012 becomes infructuous and accordingly stands disposed of.

15. Trial Court Record be remitted back henceforth.

16. Before parting with instant order, it is made clear that nothing observed shall be construed as an opinion on the merits of the case, as same is pending trial. Whatever has been observed herein is for the disposal of instant petition qua the petitioner only.

17. No order as to costs.

SURESH KAIT, J

APRIL 11, 2012

MK