

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.190 OF 2022

Arun S/o. Harishchandra Sonar,
Age 60 years, Occu. Business,
R/o. Taloda, Taluka Taloda,
District Nandurbar

.. Applicant

Versus

State of Maharashtra
Through Police Sub Inspector
Shahada Police Station,
District Nandurbar

.. Respondent

...

Mr. Chaitanya C. Deshpande, Advocate for Applicant;
Mr. S. B. Narwade, A.P.P. for Respondent

...

CORAM : S. G. MEHARE, J.

DATE : 13-06-2023

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The applicant claims the ingot of gold seized from him in Crime No.21 of 1991 registered with Shahada Police Station, District Nandurbar.
3. The facts of the case, in brief, are that the police had registered the above crime for the offences punishable under Sections 395, 397 and 398 of the Indian Penal Code. Some of the

co-accused were absconding. Hence, the trial was conducted against the accused facing the trial. The trial Court had convicted them. However, this Court acquitted them by order dated 10.11.2000. The prosecution had a case that the stolen ornaments were sold to the applicant, and he melted them in ingots. Instead of arraigning the applicant as an accused of purchasing the stolen property, he was listed as a witness. He had deposed in the trial that he did not purchase the stolen property. It was his ingot.

4. Since some of the accused are absconding and the case is pending, he applied under Section 451 of the Code of Criminal Procedure vide Miscellaneous Application No.13 of 2021 for delivering the possession of gold ingot seized in the crime. The learned Additional Sessions Judge, Shahada, declined the prayer of the applicant, observing that the material on record does not indicate whether the applicant is a goldsmith and possesses a valid license to possess the gold in the form of an ingot. There is no *prima facie* evidence to hold that the applicant is a true owner of the said gold ingot.

5. The learned counsel for the applicant would submit that in an appeal preferred by the convicts, this Court has observed that so also the evidence of panchas discloses that though the alleged discovery refers to certain ornaments, the recovery was actually of melted gold or gold bars. There is nothing to place on record, nor

even attempt made by the investigating machinery, to establish any link between the ornaments alleged to have been sold by the appellants to the respective goldsmiths and the melted gold stated to have been converted from the goldsmiths. Heavily relying on these observations, the learned counsel for the applicant would submit that since ingots were recovered from the custody and possession of the applicant, he was presumed to be the owner of the gold ingot unless other persons claimed the ownership. He would also argue that he is claiming the possession of the ingot under Section 451 of the Cr.P.C. i.e. subject to the condition to produce the same as and when called by the Court. The police also have no objection to handing over the ingots to him. The Investigation Officer never denied that the applicant was a goldsmith. Hence, the application deserves to be allowed.

6. Per contra, the learned A.P.P. would submit that the applicant was to prove his legal title over the ingot. He did not support the prosecution. He did not produce a valid license to possess the gold in the form of an ingot. The trial is not concluded as some of the accused are still absconding. The appeal would lie against the impugned order under Section 454 of the Cr.P.C. He would submit that in the absence of cogent and clear evidence, as regards the title of the applicant, it would be unsafe to hand over the custody of the ingots to the applicant pending the trial.

7. As far as the arguments of the learned counsel for the applicant that against the impugned order, an appeal would lie under Section 454 of the Cr.P.C, reading Section 454 of the Cr.P.C. it appears that an appeal would lie against the orders under Sections 452 and 453 of the Cr.P.C. Here, the applicant had moved an application under Section 451 of the Cr.P.C. Hence, the Court believes that no appeal would lie under Section 454 of Cr.P.C. against the order rejecting or allowing an application under Section 451 of Cr.P.C.

8. It is not disputed that the ingots the applicant claims were seized in the crime from his custody. The prosecution has a case that the golden ornaments were sold to the applicant and other goldsmiths after dacoity. The applicant was a witness in the case. He had deposed before the Court that he had not purchased the stolen property. The person in possession of the property is presumed to be the owner of the property unless the contrary is proved.

9. In order to establish the case, the burden was on the prosecution to prove that the applicant had purchased the stolen property from the accused. However, the prosecution had no evidence that the acquitted accused sold the stolen ornaments to the applicant. The learned counsel for the applicant has correctly referred to the observations of this Court in the case of *Bokya*

Magtya Valvi Versus State of Maharashtra [BCR 2001 Suppl 27 : Laws (Bom) 2000 11 16]](filed by convicts in this crime) that the prosecution did not establish any link between the ornaments alleged to have been sold by the accused to the respective goldsmiths. If these observations are considered, it would be difficult to accept the arguments of the learned A.P.P. that the applicant was to prove his title at this juncture.

10. In the absence of any link between the ornaments sold by the accused to the applicant, the objections of the prosecution are without any legal basis. That apart, the Investigation Officer, who was the master of the case, also has given no objection to releasing the gold ingot to the applicant. Be that as it may, the prosecution cannot run away from the fact that the alleged ingots were seized from the applicant, and there was no evidence to believe that it was a stolen property purchased from the convicts (now acquitted). Since the trial is not concluded finally and is pending against the absconding accused, the Court may ask the applicant to produce the same ingot for the purpose of trial or if any of the accused claim the title over it. The prosecution may prove that the applicant had purchased stolen property.

11. Considering the case of the prosecution that the ingots were seized from the applicant and failure to prove the link between the ornaments alleged to have been sold by the accused to the

applicant, it would be improper to deny him the custody as provided under Section 451 of the Cr.P.C. For the above reasons, the revision application deserves to be allowed. Hence, the order:-

ORDER

- i) The revision application is allowed.
- ii) The gold ingot weighing 90 grams, seized in Crime No.21 of 1991 registered with Shahada Police Station, District Nandurbar, be handed over to the applicant on the condition that he shall produce the gold ingot as and when called by the Court during the further trial, by executing a *supratnama* of Rs.7,00,000/- before the trial Court.
- iii) Rule is made absolute in the above terms.

**(S. G. MEHARE)
JUDGE**

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