

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 33 OF 2015

Satish S/o Subhashrao Zagade

Age : 34 Yrs., Occ. : Service,

R/o : Sambhaji Colony,

N-6, CIDCO, Aurangabad,

Tq. & Dist. : Aurangabad.

..... PETITIONER

V E R S U S

The State of Maharashtra

Through Police Station Officer

CIDCO Police Station,

Aurangabad, Tq. & Dist.

Aurangabad.

..... RESPONDENT

.....

Mr. Shrimant S. Mundhe, Advocate

for the Petitioner.

Mr. D.R.Kale, A.P.P. for Respondent - State.

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CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2015

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ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned A.P.P. for respondent – State, taken up for final hearing.

2. Heard Mr. Shrimant S.Mundhe, the learned counsel for the Petitioner and Mr. D.R.Kale, the learned A.P.P. for respondent - State.

3. The petitioner is the first informant. He filed report with Police Station CIDCO, Aurangabad on 17/03/2013. The said report was in respect of the theft that occurred at his house. The First Information Report [hereinafter referred as 'F.I.R.' for brevity] is registered as Crime No. 76/2013. In the F.I.R. itself, he has specifically pointed out and gave the description of the stolen articles, which includes various golden ornaments and cash.

4. According to the petitioner, the stolen articles were seized by the Investigating Officer from accused Shiva Kamble.

5. The petitioner filed application before the learned Chief Judicial Magistrate, Aurangabad u/s 457 of the Code of Criminal Procedure for releasing the seized property in his favour. The said application was registered as M.A. No. 2262/2013. The said application was not opposed by the Investigating Officer, however, the learned Judicial Magistrate First Class, Court No. 14, Aurangabad rejected the said application on 14/02/2013 on the ground that the petitioner has not filed the receipts and held that unless and until there is evidence on record in respect of proof of ownership, the property can not be released.

6. Feeling aggrieved thereby, the Revision is carried before the revisional Court. The learned Additional Sessions Judge on 30/09/2014 rejected the Revision filed on behalf of the present petitioner.

7. The reasoning given by the learned Magistrate for rejection of the application filed on behalf of the petitioner is that the petitioner has not given the description of the property and also has not produced on record the receipts of the golden ornaments.

8. The aforesaid reasoning given by the learned Magistrate is contrary to the record. In paragraph 5 of the application u/s 457 of the Code of Criminal Procedure, the petitioner has specifically stated that the receipt of the golden ornaments are filed on record for the perusal of the Court. Further, those receipts are also filed on record along with the present application. Further, the petitioner has specifically stated about the weight and description of the stolen property in the F.I.R. itself. Surely when the application u/s 457 of the Code of Criminal Procedure was moved by the petitioner, that was not a stage for deciding the ownership.

9. In that view of the matter, the orders passed by the learned Magistrate and confirmed by the revisional Court are required to be set aside. Accordingly, the order passed by the learned Magistrate dated 24/12/2013 in M.A. No. 2262/2013 together with the Judgment of the 4th Additional Sessions Judge dated 30/09/2014 in Criminal Revision No. 15/2014 are hereby quashed and set aside.

The application filed on behalf of the present petitioner u/s 457 of the Code of Criminal Procedure is allowed.

The seized property shall be handed over to the present petitioner on he executing the Suprudnama and Bond of ₹ 6,00,000/- [Rupees Six Lacs only] before the Chief Judicial Magistrate, Aurangabad.

The petitioner is directed to produce the said property as and when required by the learned Chief Judicial Magistrate.

It is specifically directed that the petitioner shall not pledge the said articles either with any private person or the bank including the nationalized bank.

The petitioner shall not change the nature of the seized property.

10. Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/Crim. W.P. 33.2015 - [J]

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