

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.173 OF 2004

- 1] Shaileja w/o. Popat Salunke,
Age 27 years, Occ. Household,
r/o. Sarole Pathre, Tq.Sangamner
District Ahmednagar
- 2] Eknath Ganpat Chindhe,
Age 55 years, Occ. Service,
r/o. Pathare Bk., Tq.Rahuri,
District Ahmednagar ..Applicant

Versus

The State of Maharashtra ..Respondent

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Mr.Tushar M. Tandale, advocate i/b. Mr.A.B. Kale,
advocate for appellants
Mr.S.B.Pulkundwar, APP for respondent - State

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CORAM : M.T. JOSHI, J.
DATE : NOVEMBER 23, 2015

ORAL JUDGMENT :

Heard both sides.

2] Aggrieved by the direction of learned
Additional Sessions Judge, Kopergaon in Sessions
Case No.38 of 2002 vide order dated 21st February,
2003 regarding disposal of the property i.e. cash

amount of Rs.35,000/- and Rs.20,000/- i.e. Article No.24 and Article No.25, respectively, present appeal is preferred.

3] The original five accused were tried for the offences punishable under Section 120-B and 302 read with 34 of Indian Penal Code. It was the prosecution case that towards a contract of killing the deceased, the amount in question, was paid to original accused no.2 and original accused no.5. They had made a statement that said amount was kept at the house of their relatives i.e. present appellants, and the same was seized from their houses. During the trial, however, no evidence was led to this effect and therefore, learned Addl. Sessions Judge did not believe the case of seizure of the amount and the statement allegedly made to that effect. In the circumstances, the amount was directed to be confiscated to the State.

4] Learned counsel for the appellants submits that the prosecution case itself shows that the respective cash amount was seized from the houses of present appellants. There is evidence to show that the amount was raised by the present appellants and in the circumstances, the order of confiscation of the amount to State, is wrong.

5] Learned A.P.P. opposes the appeal. He submits that no material was placed by present appellants before learned Addl. Sessions Judge to show that the property i.e. the amount in question, belong to them. In fact, the case of the prosecution that the amount was recovered from the houses of present appellants, was not believed by learned Addl. Sessions Judge.

6] Upon hearing both sides and perusal of the record, in my view, no material was placed by

present appellants before learned Addl. Sessions to show that the amount was seized from their houses and that said amount was, in fact, owned by them and not their respective relatives i.e. the accused as mentioned above. Therefore, learned Addl. Sessions Judge could not have, at all, passed any order granting custody of the said amount to present appellants. The appeal, therefore, deserved to be dismissed.

7] In the result, the appeal is hereby dismissed.

8] The appellants, however, would be at liberty to file an application before the concerned learned Addl. Sessions Judge and prove that they are entitled for custody of the property i.e. the cash amount.

[M.T. JOSHI, J.]