

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.231 OF 2002

Babulal Mancharam Soni	]	
Adult, Indian,	]	
Earlier residing at 62-A,	]	
Old Chettagali, Jhaveri Bazar,	]	
Sheikh Memon Street,	]	
Mumbai – 400 002.	]	
Now residing at Village Khedawas,	]	 Applicant /
Dist. Pali, Rajasthan.	]	(Org. Accused No.3)

Versus

The State of Maharashtra	]	
(At the instance of Malbar Hill Police Station)	]	 Respondent

Mr. S.V. Marwadi for the Applicant / Original Accused No.3.

Mr. H.J. Dedia, A.P.P., for the Respondent/State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 9TH DECEMBER 2015.

ORAL JUDGMENT :

1. This Criminal Revision Application is preferred by Original Accused No.3 challenging the order dated 1st August 2001 passed by the Additional Sessions Judge, Greater Bombay, in Criminal Appeal Nos.173 of 1998 and 166 of 1998. By the impugned Judgment and Order, the conviction and sentence of the Applicant for the offence punishable under Section 411 of IPC, as recorded by the Additional Chief Metropolitan Magistrate,

40th Court, Girgaon, Mumbai, was confirmed. By the said Judgment of the Trial Court, the Applicant is convicted in all seventeen cases for the offence punishable under Section 411 of IPC and sentenced to suffer R.I. for three years and to pay fine of Rs.1,000/- each, in default to suffer R.I. for one month.

2. Brief facts of the Revision Application can be stated as follows :-

The Applicant was prosecuted and charge-sheeted along with Original Accused Nos.1 and 2 for the offences punishable under Sections 379, 426 and 411 of IPC in all thirty-seven cases. Original Accused No.1 was the main accused charged with commission of theft of gold Mangalsutras in all these cases, whereas, Original Accused No.2 was charged with the offence under Section 411 of IPC for receiving the stolen property in all thirty-seven cases. The present Applicant was charged for the offence of receiving stolen property punishable under Section 411 of IPC in all seventeen cases. Original Accused No.1 pleaded guilty and, accordingly, his plea of guilt, being voluntary one, was accepted by the Trial Court and he was convicted for the offence punishable under Section 379 of IPC and sentenced to suffer R.I. for three months and to pay fine of Rs.1,000/-, in default to suffer R.I. for one month each, in all the thirty-

seven cases. As Original Accused Nos.2 and 3 pleaded not guilty, trial proceeded against them for the offence punishable under Section 411 of IPC. The Trial Court, on the basis of evidence led before it by the prosecution, was pleased to convict Accused No.2 in all twenty-two cases for the offence punishable under Section 411 of IPC; whereas, the present Applicant / Accused No.3 was convicted, as stated above, in seventeen cases for the offence punishable under Section 411 of IPC.

3. The evidence on record proves that Accused No.1 was found to be habitually committing the theft of gold Mangalsutra. In all, thirty-seven Complainants were examined before the Trial Court, who had deposed about the theft of Mangalsutra. Original Accused No.1 also admitted the guilt and was convicted accordingly.

4. Now, as regards Accused Nos.2 and 3, the prosecution has examined the Panch Witness Mr. Kasam and Investigating Officer Mr. Mane to prove that, during custodial interrogation, Original Accused No.2 gave a disclosing statement that he has purchased the Mangalsutras and Chains on different occasions from Accused No.1. He has melted those articles. Out of the melted gold, some part of it was retained by him and some part was given and sold to Accused No.3. The Memorandum

Statement of Accused No.2 led to recovery of 22 gold bars wrapped in papers from one stall opposite to Amir Wine Shop. Those gold bars were seized under Panchanama (Exhibit-4).

5. Thereafter, the statement of Accused No.3 also came to be recorded in the presence of the Panch and his disclosing statement also led to the recovery of 15 gold bars from one suite-case kept in Room No.2 of Building No.64-A, Teli Galli. It was Accused No.3, who has guided the Police and Panch to the said place and produced 15 gold bars, which came to be seized under Panchanama. As found by the Trial Court, absolutely nothing was elicited in the cross-examination of Investigating Officer Mr. Mane or the Panch Witness Mr. Kasar to disbelieve them in any way. There were neither any contradictions, nor omissions, or, inconsistencies and as a result of it, their evidence can be relied upon, and as rightly been relied upon by the Trial Court and the Appellate Court to prove the recovery of these 15 gold bars at the instance of the present Appellant / Accused No.3. The Memorandum Panchanama of Accused Nos.2 and 3 reveals that these gold bars were prepared from the stolen Mangalsutras and, therefore, it goes without saying that the stolen properties were found and recovered from the possession and at the instance of the Applicant.

6. The submission of learned counsel for the Applicant is that no necessary connecting link is established between the stolen property and the Applicant. According to him, unless the evidence on record proves that Applicant has received the stolen property, knowing and having reason to believe the same to be a stolen property, or, with dishonest intention, charge under Section 411 of IPC cannot be attracted. To substantiate his submission, the learned counsel for the Applicant has relied upon the Judgment of the Supreme Court in ***Manik Devrao Shinde & Ors. Vs. State of Maharashtra, 1994 SCC (Cr.) 1761***. However, the facts of the reported authority reveal that the recovery of the stolen articles was made from the hut of the accused, without there being any corroborating evidence in the form of Memorandum Panchanama.

7. In the instant case, recovery is made in pursuance of the Memorandum Statement given by the Applicant under Section 27 of the Evidence Act. Moreover, the articles found in his possession, i.e. 15 gold bars, are proved to be made from the stolen Mangalsutras. In such situation, it cannot be accepted that there was no connecting link as such between the stolen property and the Applicant. The recovery of the gold bars is also made from the place exclusively within the knowledge of the

Applicant. No explanation, worth the name, is offered by the Applicant about possession of such huge quantity of gold bars. As regards submission that there was no evidence to prove that the Applicant had knowledge that it was a stolen property, it is sufficient for the purpose of Section 411 of IPC that he was knowing or having reason to believe the same to be a stolen property. Accused No.2, from whom he has taken or purchased those gold bars, was not a gold-smith or dealing in the gold business. Moreover, nothing is brought on record to show that the Applicant had any license to hold or possess the gold bars of such huge quantity.

8. In such situation, in the absence of any explanation offered by him and in the light of all the facts and evidence on record, it has to be held that the Trial Court and the Appellate Court have rightly held the Applicant guilty for the offence punishable under Section 411 of IPC. Hence, this Revision Application holds no merit, therefore, stands dismissed.

9. The Bail Bonds of the Applicant stand cancelled. Applicant is given a period of four weeks from today to surrender before the Trial Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]