

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1225 of 2007

Amrutlal Gulabchand Jain .. Appellant
Versus
The State of Maharashtra & ors .. Respondents

Mr.Yashpal Thakur i/b PKA Advocates for the appellant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th AUGUST, 2015

ORAL JUDGMENT :-

1 The appellant is the Managing Director of M/s.Auro Gold Jewellers Pvt.Ltd. In an incident of dacoity, the property belonging to the said Company was robbed. On a report lodged by one of the employees of the Company, investigation commenced. Some of the suspects/culprits came to be arrested. In the course of investigation, the robbed property was also recovered by the police. The arrested suspects/culprits were prosecuted. The prosecution resulted in their conviction. However, while delivering the judgment of conviction of the accused persons in the said case, the learned Addl. Sessions Judge

directed the muddemal property to be retained in the Court till the tracing out of the other *wanted* accused.

2 This order was passed on 26th April 2007. thereafter, one more accused was apprehended and prosecuted, but the prosecution resulted in his acquittal. The appellant made an application before the Addl. Sessions Judge stating that the property in question belonged to the Company M/s.Auro Gold Jewellers Pvt.Ltd, and that there was no possibility of the other accused being traced within a reasonable time, and that, therefore, the muddemal property be returned to the appellant as the Managing Director of the said Company. This application was rejected by the learned Addl. Sessions Judge, observing that the order for disposal of the property had already been passed at the time of delivering of the judgment, and that he had no powers to review the said order.

3 I have heard Mr.Yashpal Thakur, learned counsel for the appellant. I have heard Mrs.M.R.Tidke, the learned Additional Public Prosecutor for the State. I have also gone through the Record and Proceedings.

4 The Court of Sessions, while convicting the accused persons, has come to the conclusion that the property belongs to the Company M/s.Auro Gold Jewellers Pvt.Ltd. The property was ordered to be retained with the Court only because some of the culprits/accused were to be apprehended, and that, in the event of their apprehension and prosecution, the property would be required during the trial.

5 Though this view was proper, about 8 years have passed since the said order. There is no reasonable possibility of the other suspects/accused being apprehended within a reasonable time. It may be recalled that one of the suspects/accused, who was later on arrested, has been acquitted. The property was recovered in the course of investigation from the accused who were tried and convicted, and not the accused who are said to be wanted.

6 During the trial, the property had been given to the appellant on his executing a bond.

7 Considering all these aspects of the matter, I am inclined to allow the Appeal. However, since there is a theoretical possibility of the property being needed by the Court in the event

of the apprehension and prosecution of some other accused, the property may be given to the Company of the appellant only on executing a proper bond.

8 Appeal is allowed.

9 The property in question be directed to be returned to the duly authorized representative of M/s.Auro Gold Jewellers Pvt.Ltd on the said Company executing a bond, through its authorized representative, in the sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs), with one surety in like amount, to cause production of the said property, as and when required by the trial Court. The necessary bond be executed before the trial Court. The bond shall remain in force for a period of five years from today.

10 Sufficient photographs of the property be taken in the presence of the police/Investigating Officer at the cost of the Company of the appellant, for the purpose of establishing the identity thereof, before same is actually returned to the authorized representative of the said Company.

11 Appeal is disposed of accordingly.

(ABHAY M.THIPSAY, J)