

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1299 OF 2007

VASANTRAO RAMCHANDRA PATIL)
(since deceased through Legal Heir))
)
VIKRAMSINHA VASANTRAO PATIL)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rahul S. Kadam, Advocate for the Appellant.

Mrs.S.Gajare-Dhumal, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 17th JULY 2015.

ORAL JUDGMENT :

1 Leave to amend the cause title of the appeal in
accordance with the order dated 29th April 2008, is granted. The
amendment be carried out forthwith.

2 This appeal has been filed by the original appellant, referred to as 'the appellant', under the provisions of Section 454 of the Code of Criminal Procedure (Code), being aggrieved by the judgment and order dated 16th March 2007, passed by the Additional Sessions Judge, Karad, who, though observed in the judgment that 'the appellant was entitled to have the custody and possession of a certain property', still, did not pass any order directing its return to him, on the ground that 'such property had not been produced before his court during the trial.'

3 I have heard Mr.Rahul S. Kadam, the learned counsel for the appellant. I have heard Mrs.S.Gajare-Dhumal, the learned APP. I have gone through the copy of the impugned judgment that is annexed to the appeal memo.

4 The articles, which the appellant wants to be returned back to him, are three gold ornaments, one gun license, one pistol and one 12 bore gun, seized by the police in connection with the investigation of the case in which the appellant was prosecuted

and was acquitted. It appears that, the learned Additional Sessions Judge had come to a clear conclusion that the appellant was entitled to the custody of the said articles. In paragraph 15 of the judgment, the learned Additional Sessions Judge clearly observed that the gun and pistol had been kept in Armory, and that, according to him, it would be just and proper to give directions to the police to return the gun and pistol to the accused (appellant) who was having a valid license for the same, and that, the same could be given in his custody as per the law and procedure under the Arms Act. The learned Additional Sessions Judge also observed that it would be just and proper to give directions to return the muddemal gold to the accused (appellant) which was attached in the case, but that the said gold ornaments were not produced before his court by the police.

5 In the operative part of the judgment, the disposal only of the articles actually and physically produced before the court was ordered, and no orders were passed about these articles. The appellant, therefore, made an application before the learned

Additional Sessions Judge praying that an appropriate order for the disposal of the articles that had been seized, but not produced before the court during the trial, also be passed. This application was rejected by the successor Additional Sessions Judge by an order dated 26th October 2007, holding, *inter alia*, that the entitlement of the appellant to have the said property was already noted by his predecessor Additional Sessions Judge (while delivering the judgment), and that, no further order was needed. Being aggrieved thereby, the appellant has approached this court by filing the present appeal.

6 The correctness of the view taken by the Additional Sessions Judge, viz., that since the articles were not physically produced before him, he was not entitled to pass any order regarding their disposal, is not free from doubt. The property had been seized in connection with the investigation of the case. It does not seem necessary that for disposing of the property, as contemplated under Section 452 of the Code, the property must be *physically produced* before the court. The view that, *'it would be*

sufficient, if such property would be under the authority and control of the court, for enabling the court to pass an order regarding its disposal as contemplated under Section 452 of the Code,' would be quite reasonable. In such cases, the property can be deemed to have been produced before the court. However, I do not express any final opinion on this aspect, as the issue is not argued and debated. It, however, appears that the appellant could have made an application to the Magistrate under Section 457 of the Code and sought the return of the property. This is what, perhaps, the successor Additional Sessions Judge expected, when he observed that 'no order was necessary.' The appellant, however, instead of doing so, has approached this court, by filing the present appeal against the judgment and order dated 16th March 2007.

7 Ordinarily, I would have allowed the appeal and directed the return of the property to the appellant, instead of directing the appellant to approach the Magistrate under Section 457 of the Code, considering the further delay that would be caused thereby. However, the original appellant is now dead.

Moreover, among the property, the custody of which the appellant is seeking, there are two fire arms. The appellant was having a license to hold the same. Now, since he is dead, who would be entitled to the custody of the property would need consideration. The appellant's legal heir, who has been brought on record, ofcourse would not be automatically entitled to get the arms held by his father under a valid license.

8 Considering all the relevant aspects of the matter, in my opinion, the appeal should be disposed of by the following order :

1. The Appeal is partly allowed.
2. The Additional Sessions Judge shall hold an inquiry into the matter, and pass an order regarding disposal of the property in question, in consonance with, and in conformity with, the observations made in the judgment and order dated 16th March 2007. He shall, however, take into consideration, the fact of the death of the accused (original appellant) and make such consequential orders, as may be necessary.

3. The Additional Sessions Judge shall complete the inquiry within a period of two months from the date of receipt of this order by him.
4. The Appeal is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J.)