

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

CRL.A.No. 834 of 2005 ()

AGAINST THE JUDGMENT IN SC 265/2000 of ADDL.SESIONS COURT, FAST
TRACK NO.III (ADHOC), MANJERI DATED 26-02-2005

APPELLANT(S)/PETITIONER IN CRL.M.P.NO.37/2005(PW3):

BENGALATH ABDUL WAHAB, S/O.KOUDU KUTTY,
MORAYUR AMSOM, MORAYUR POST.

BY ADVS.SRI.DINESH MATHEW J.MURICKEN
SRI.P.V.BALAKRISHNAN

RESPONDENT(S)/COMPLAINANT & ACCUSED 1, 2 AND 7:

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1. STATE OF KERALA, REPRESENTED BY
THE CIRCLE INSPECTOR OF POLICE, MANJERI
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.
 2. ABU, S/O.KUNHAYAMU, MUTHUVADAN HOUSE,
ODUVANKUNNU, PALLIPADY, KARAKKUNNU
MALAPPURAM DIST.
 3. NARAYANAN @ KUNHUTTY, S/O.NADI,
AYINAD HOUSE, AMAYOOR ROAD, KARAKKUNNU
MALAPPURAM DISTRICT.
 4. RAMAKRISHNAN @ BABU, S/O.CHELLY,
VALIYAPARAMBIL HOUSE, KARAKKUNNU, MALAPPURAM DISTRICT.

ADV.SMT. SEENA RAMAKRISHNAN, PUBLIC PROSECUTOR.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
05-06-2015, ALONG WITH CRA. 835/2005, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

acd

P.D. RAJAN, J.

Crl.Appeal Nos.834/2005 & 835/2005

Dated this the 5th day of June, 2015

JUDGMENT

Crl.Appeal No.834/2005 has been preferred against the judgment in S.C.No.265/2000 of Additional Sessions Judge, Fast Track Court No.III (Adhoc), Manjeri and Crl.Appeal No.835/2005 has been preferred against the order in Crl.M.P.No.37/2005 in S.C.No.265/2000 of the above Court. S.C.265/2000 was charge sheeted by the Circle Inspector of Police, Manjeri for offence punishable u/s.395 of IPC against 12 accused persons. Prosecution examined PW1 to PW16 and marked Ext.P1 to P30 in evidence. After trial, A1 was convicted and all other accused were acquitted.

2. While disposing the case, in paragraph 23 of the

judgment, the learned Sessions Judge observed as follows:

"23. It is to be noted that PW3 has got a case that he lost a sum of Rs.2,99,000/- which he entrusted to PW1. PW1 has stated that he has to entrust the amount to his brother in law so as to remit it in Kerala Financial Corporation in repaying loan dues. It is true that no scrap of paper is produced by PW3 or 4 to substantiate the stand that the amount is entrusted with PW1 so as to repay it in Kerala Financial Corporation. How PW3 has raised so much of amount is not explained by PW3 with reliable evidence. According to him he raised the amount by way of pledging gold ornaments and kept it in his house for one month. PW3 admitted that he bid a kuri. But on what date the pledge was made and how many ornaments are pledged etc. are not disclosed by producing reliable records. No bank records are produced by PW3 in order to prove that he bid a kuri and took that much amount from the bank. In total PW3 has not produced any records to substantiate his claim that he entrusted a sum of Rs.2,99,000/- with PW1. PW3 has also not claimed the amount till filing of CMP 37/2005 on 29.1.2005. The defence counsel has argued that the entire amount entrusted with PW1 is black money and PW3 is distributing it to this customers and it is on that reason PW3 has failed to produce any records to prove that Rs.2,99,000/- is received by him from authenticated source. But such a reason is not a shelter for the first accused to get a clean acquittal to the act of robbery from the clutches of law. Since PW3 has failed to

furnish satisfactory evidence to prove his ownership over the entire cash by producing reliable records I am of the view that the argument advanced by the counsel appearing for the defence cannot be negatived but instead I can deny in granting the total amount to PW3. It is also evident from the evidence of PW1 and PW2 that they have no case that A2 to A10 have been actually involved in the offence. If that be so the alleged recovered amount from other accused except A1 will not be the property of PW3. Therefore the request for getting the total amount to PW3 cannot be allowable. Hence, the amount recovered by way of Exts.P6 alone (Rs.30,000) can be given to PW3 after the appeal period that also subject to production of 'no objection certificate' from the enforcement directorate, Kozhikode. The accused Nos.2 to 10 have not claimed the amount as of their own. Therefore the remaining amount have to be confiscated to the Government. Other properties also have to be confiscated to Govt."

3. After disposal of the case, the appellant approached the trial Court for getting the seized amount and filed C.M.P. 37/2005 u/s.452 of Cr.P.C. He contended that the amount seized by the police, which was marked as Mos 1 and 2 series, has to be returned to him. The request made by the appellant in Crl.M.P.No.37/2005 was partly

allowed by the learned Sessions Judge observing as follows; 'hence this petition allowed in part only to the property covered by ext.P6 alone. For the remaining amount the petitioner is not entitled".

4. The prosecution allegation was that while PW1 was carrying Mos 1 and 2 amount for entrusting it to PW4, the accused persons chased him in a jeep and seized the amount from him. According to the appellant, (PW3) he entrusted the amount to PW1. The learned counsel for the appellant submitted that all the above contentions were raised before trial Court and the learned Judge was not inclined to release the entire amount. He contended that a part of the property was released to him and no specific reasons were stated by the learned Judge at the time of partly allowing the petition.

5. The learned Public Prosecutor submitted that no

documents were produced by the appellant in the trial Court to prove the ownership of the property for releasing the amount.

6. According to Section 452 Cr.P.C., when an enquiry or trial in a criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it. When the trial Court denies right in the property, it has to record its specific reason with convincing evidence. Mos 1 and 2 series were seized on the basis of confession made by A7 by virtue of seizure mahazar, Ext.P4. The accused had confessed to the Police that the recovered property was not his property. The Court has a responsibility to say its reason, while declining to release the amount as per

Section 452 of Cr.P.C. Since there is no hard and fast rule, it must be depending upon circumstances of each case and if the claimant comes forward and raises a claim to return the seized articles to his custody, the Court has a responsibility to verify the claim and release the property to the claimant.

7. In R.V. Kelkar's Criminal Procedure (Fifth Edition), Page 854 reads as follows: "This section, apart from providing that any property produced before the court or in respect of which any offence has been committed be delivered to a complainant or an accused person or to any other person entitled to its possession, does also mention that the property may be ordered to be confiscated. However the exercise of this power is the exercise of a judicial discretion, and the order so made can be justified only when it could be said that in consideration of all the circumstances of the case, such an order is appropriate". In Suleman Issa v. State of

Bombay [AIR 1954 SC 312] held as follows:

Section 517 contains a general provision for disposal of the property in the circumstances mentioned in the latter part of the Section. Section 61-E by itself does not empower the court to impose the penalty of confiscation and the sentence of imprisonment and fine authorised by the Section is a nominal sentence for the obvious reason that the Section proceeds upon the mere belief that the property in possession of the person is stolen property or property fraudulently obtained possession of which is not satisfactorily accounted for. It is an offence under the local Police Act and not under an Act which contains any substantive provision such as the Sea Customs Act imposing the penalty of confiscation.

Confiscation is not the only mode of disposal under S. 517 and is singularly inappropriate in a case where the accused is prosecuted for an offence punishable with a maximum sentence of 3 months and a fine of Rs. 100/- It was certainly open to the court to order the property to be delivered to the person claiming to be entitled to its possession.

Here the gold was found from the possession of the appellant, and the court was not called upon to consider any rival claims about its possession. Admittedly there was no evidence to prove that it was stolen, or that it was fraudulently obtained and all that was found was that there was reason to believe that it was stolen or fraudulently obtained and that the appellant failed to account for its possession to the satisfaction of the court. The High Court

thought that the gold was smuggled from Africa into India but assuming this to be so, its confiscation under S. 517 upon the existence of a mere belief required to sustain a conviction under S. 61-E was palpably harsh and unreasonable. We hold, therefore, that the order of confiscation of gold cannot be supported."

Therefore, the remaining amount has to be delivered to the claimant appellant instead of being confiscated to Government. Therefore, the direction for production of no objection certificate from the Enforcement Directorate is hereby set aside.

8. Considering the facts and circumstances of the case, the order passed by the learned Sessions Judge in C.M.P.No. 37/2005 is set aside and also the observation made in para 23 of the judgment in S.C.No.265/2000, "Hence, the amount recovered by way of Exts.P6 alone (Rs.30,000) can be given to PW3 after the appeal period that also subject to production of 'no objection certificate' from the enforcement

directorate, Kozhikode. The accused Nos.2 to 10 have not claimed the amount as of their own. Therefore the remaining amount have to be confiscated to the Government. Other properties also have to be confiscated to Govt." are hereby set aside. The trial Court is directed to release the amount forthwith to the claimant in Crl.M.P.No.37/2005 since no other claimants have come forward.

The Crl.Appeals are allowed.

P.D. RAJAN, JUDGE.

acd

