

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPEAL NO.815 OF 2005

The State of Maharashtra,
Through Police Station,
Parner.

...APPELLANT
(Ori. Complainant)

VERSUS

- 1) Radhabai Sadashiv Gunjal,
Age-35 years,
- 2) Rakhamabai Tukaram Yeole
Age-50 years,
- 3) Laxman Mohana Gunjal,
Age-55 years,

All R/o-Daithane - Gunjal,
Tq-Parner, Dist-Ahmednagar.

...RESPONDENTS
(Ori. Accused)

...
Mr.A.M. Phule, A.P.P. for Appellant-State.
Mr.N.N. Shinde Advocate for Respondent No.1.
Mr.V.S. Bedre Advocate for Respondent Nos.
2 and 3.

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CORAM: A.I.S. CHEEMA, J.

DATE : 21ST APRIL, 2016

JUDGMENT :

1. This is an Appeal against acquittal of the Respondents - accused Nos. 1 to 3 by J.M.F.C., Parner in Summary Trial Case No.723 of 1997 for offence punishable under Section 4 read with Section 20 and 21 of the Indian Treasure-Trove Act, 1878 ("Treasure Act" in brief).

2. In brief, the case of prosecution is as under:

(A). On 23rd September 1997, Police Patil Daithane-Gunjel, Tq-Parner filed F.I.R. with police station Parner informing that he came to know from newspaper that in Daithane-Gunjel some persons had found gold coins in the Shivar. He made discreet inquiry and came to know that accused No.1 Radhabai and accused No.2 Rakhamabai had, in a field called "Chaupala", found gold coins. Complainant informed police and the police along with Tahsildar came for inquiry and when

inquires were made with accused No.1 Radhabai, she gave recovery of 50 gold coins. The F.I.R. was filed claiming that similar gold coins are likely to be with accused No.2 Rakhamabai and accused No.3 Laxman Gunjal also.

(B). The police recovered some gold coins from accused No.2 Rakhamabai as well as some were recovered from accused No.3 Laxman Gunjal. It transpired that accused No.3 had kept some coins with gold-smith PW-5 Balasaheb who had melted two of the coins. The same were also seized. Police had recorded Panchnama of the seizure from accused No.1 Radhabai and also recorded Spot Panchnama from where recovery of gold coins was made from accused No.1 Radhabai.

(C). In the course of investigation, the seized coins were got examined from Assistant Director, Archeology and it transpired that the coins pertain to the time of Devgiri King,

"Rajesinghan" and were from the period 1200 to 1247. That, they had historical importance and were more than 100 years old. The coins had picture of "Dancing God Krishna" and they were known as "Padma-tank".

(D). Police recorded statements of witnesses and after investigation, charge-sheet came to be filed.

3. J.M.F.C., Parner framed charge under Section 4 read with Section 20 and 21 of the Treasure Act. The accused pleaded not guilty. Their defence as is appearing from the cross-examination of the witnesses is that of denial. The trial Court discussed the evidence and recorded Judgment of acquittal of the accused persons. The Tahsildar was directed to handover the seized coins to Collector for disposal according to the provisions of the Treasure Act.

4. The learned A.P.P. has argued that the trial Court has wrongly acquitted the accused persons. There was evidence of PW-5 Balasaheb with whom accused No.3 Laxman had kept some coins. The gold-smith had diluted two of the coins to explain to accused No.3 as to what were the gold contents in the coins. According to the A.P.P., the trial Court wrongly acquitted the accused only because Panchnamas regarding seizures from accused Nos.2 and 3 and the gold-smith were not prepared by the police machinery. The A.P.P. submitted that there was evidence of Investigating Officer of recovering such gold coins from accused persons and Investigating Officer should have been believed.

5. Against this, the learned counsel for the Respondents-accused submitted that the Panchas in the matter were hostile and did not support the prosecution. There was only one Panchnama made of the recovery from accused No.1 and that was also

not duly established. Even the complainant PW-2 Sukhlal Gunjal admitted that he did not know the contents of the F.I.R. and signed it as per the directions of the superiors. It is argued by the accused that cross-examination of PW-5 Balasaheb shows that he was normally asking for receipt of purchase whenever anybody comes to his shop to sell ornaments but in this matter he did not ask for such receipt from accused Laxman. According to the counsel, the evidence of PW-5 Balasaheb that accused No.3 brought and kept some gold coins with him, was unnatural and could not be accepted.

6. I have gone through the evidence and also the reasonings recorded by the trial Court. In this matter, before the F.I.R. was registered on 23rd September 1997 at 5.15 p.m., the police and Tahsildar appear to have gone and recorded Panchnama of recovery of 50 gold coins from accused No.1 Radhabai. As per the Panchnama Exhibit 56 the coins are said to have been

recovered from a place which was one furlong North of the residential area and it was in Wadgaon Amli Shivar in the field of one Baban Umaji Dhone, near well from under a tree where it was said to be buried. This Panchnama was drawn on 23rd September 1997 between 1.00 - 1.30 p.m. Thus, even before the F.I.R. was filed, the Panchnama of recovery was executed. The Investigating Officer PW-7 P.I. Dinkar Gaydhane claims that he recovered 50 gold coins from accused No.1 drawing Panchnama. He seized 15 gold coins from accused No.2 and 5 gold coins from accused No.3, as well as the coins diluted and which were kept with gold-smith PW-5 Balasaheb. However, for all this, no Panchnamas were prepared. Evidence of PW-7 P.I. Dinkar is also that some gold coins were seized from Dattatraya Kisan Pawar and one Shivaji Anantrao Gunjal also. However, these persons are not before the Court.

7. Evidence of PW-5 Balasaheb Shahane is

that accused No.3 Laxman came to him to his shop and wanted to verify gold coins as to the quantity of gold in them. According to this witness, accused No.3 had brought 7 coins, out of which witness PW-5 melted two of them and found that they were not of complete gold. According to him, he asked accused No.3 to keep those coins with him for two days. The evidence is that then police came and the coins were seized from him. The cross-examination of this gold-smith shows that he was asking for receipt of purchase whenever anybody comes to his shop to sell ornaments. He said that he did not ask such receipt from accused Laxman as accused did not want to sell the gold coins but only wanted to test them. I find it unnatural that if a person has found such 7 gold coins and takes it to the gold-smith, he would simply leave the gold coins there with the gold-smith without getting any document of deposit of such valuable coins. The evidence of gold-smith is not supported by any documentary evidence which

one would expect in a genuine transaction. Thus, the value of the evidence of PW-5 Balasaheb cannot be that of an independent witness.

8. Going through the reasons recorded by the trial Court, I do not find that the trial Court has committed any error if after discussing evidence it did not accept that the offence was established against the accused persons. No doubt there is evidence of PW-6 Harichandra, Assistant Director of Archeology, giving historical value of the gold coins, but that by itself is not enough.

9. Section 20 of the Treasure Act provides that if the finder of any treasure fails to give the notice or does not either make the deposit or give the security, required by Section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Government

and that he shall on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year or with fine or with both. Section 21 of the Treasure Act deals with abetment of offence under Section 20 and has provision of imprisonment which may extend to six months or with fine or with both. If the Sections are kept in view and reference is made to the First Schedule under the Code of Criminal Procedure, 1973 ("Cr.P.C." in brief), I find in Part II dealing with "Classification of offences against other laws", it is provided that for offences against other laws if the offence is punishable with imprisonment for less than three years or with fine only, it would be non-cognizable case and it would be bailable offence triable by any Magistrate. Thus, the offence under Section 4 read with Section 20 and 21 of the Treasure Act would be non-cognizable offence. This being so, under Section 155(2) of the Cr.P.C., no police officer shall investigate a non-cognizable

case without the order of a Magistrate having power to try such case or commit the case for trial. At the time of arguments, the learned A.P.P. was unable to show that when the offence was non-cognizable, any procedure as required by Section 155(2) of Cr.P.C. was followed. In fact, in the present matter even before the offence was registered, the recovery was made and even when the offence was registered, no steps as per Section 155(2) of Cr.P.C. were taken. Investigating Officer simply collected the coins drawing no Panchnamas. Trial Court has rightly not relied on such investigation. In this view of the matter the investigation was bad and on the basis of such investigation the prosecution could not succeed. The trial Court has, still appreciated the evidence and come to the conclusion that the accused deserve to be acquitted. I do not find any reason to interfere.

10. The Appeal is dismissed. Bail bonds of the Respondents -accused are cancelled.

[A.I.S. CHEEMA, J.]

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