

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4394 OF 2007

Manoj s/o Pannalal Jain,
Age about 43 years, Occ. Business
R/o. Kazari Bazar, Aurangabad

...Applicant

versus

1. The State of Maharashtra
Through Public Prosecutor
High Court of Judicature at
Bombay, Bench at Aurangabad

2. Sunil s/o Bhagwan Dalvi
Age about 42 years, Occ. Service
R/o. Snehalbagh Apartment
Kotwalpura, Khadkeshwar Road,
Aurangabad

...Respondents

None present for the applicant

Mr. M.B. Bharwaswadkar A.P.P. for respondent No.1

Mr. Joydeep Chatterji, advocate for respondent No.2.

CORAM : V. K. JADHAV, J.

DATED : 9th DECEMBER, 2016

ORAL JUDGMENT:-

1. Being aggrieved by the judgment and order dated 26.7.2007, passed by the Adhoc Additional Sessions Judge, Aurangabad in Criminal Revision No. 188 of 2005, the goldsmith, Manoj Pannalal Jain, has approached this court by filing present criminal application.

2. Brief facts, giving rise to the present criminal application, are

as follows:-

a) On the basis of complaint lodged by respondent No.2 at Kranti Chowk police station, crime No. 330 of 2002, for the offences punishable under sections 380 and 454 r.w. 34 of I.P.C. came to be registered. During the course of investigation, participation of two accused persons in the crime was revealed and thus, after conclusion of investigation, the concerned police has submitted charge sheet before the learned Magistrate at Aurangabad, vide R.C.C. No. 39 of 2003. The learned J.M.F.C. Aurangabad, by judgment and order dated 6.5.2005, in R.C.C. No. 39 of 2003, acquitted both the accused for the offences punishable under Sections 380 and 454 r.w. 34 of I.P.C. and Muddemal property i.e. golden bar, weighing 45 grams, was directed to be delivered to the present applicant goldsmith Manoj Pannalal Jain, on the condition of executing a bond of Rs.25,000/- to produce the said golden bar or its equivalent if and when ordered by the court during the period of one year.

b) Being aggrieved by the same, the respondent original complainant has preferred criminal revision No. 188 of 2005 before the Sessions Court, Aurangabad. The learned Adhoc Additional Sessions Judge, Aurangabad, by its impugned judgment and order,

as stated above, allowed the said revision and thereby quashed and set aside the order passed by the J.M.F.C. Aurangabad in R.C.C. No. 39 of 2003, as aforesaid, and further directed that the said golden bar, weighing about 45 grams be returned to the respondent complainant on his executing a bond in the sum of Rs.20,000/- for a period of one year. Hence, this criminal application.

3. None present for the applicant.

4. With the help of learned A.P.P. and the learned counsel appearing for the respondent original complainant, I have perused the record, especially the judgment and order passed by the Magistrate in R.C.C. No. 39 of 2003. In para 9 of the judgment, the learned Magistrate has made the following observations:-

“9. As it is not established that, the accused committed theft, the articles recovered cannot be termed as stolen articles. Furthermore, the goldsmith from whom the recovery of the ornaments made not supported the case of the prosecution. The gold which is seized appears to be in the form of lagad not in the form of ornaments. The prosecution not established that, that lagad was prepared by melting stolen gold ornaments only. In such circumstances, the goldsmith from whom that gold recovered is entitled for it.”

5. As per the prosecution case, on 16.9.2002, the respondent complainant at about 2.00 p.m. went to bring his wife and son from the school and alongwith them, when he returned back, found that the door of his house was opened and the latch was broken. He alongwith his wife, inspected the house and found that golden jewellery and cash worth Rs.19,500/- was stolen.

6. The learned Magistrate in para 9, as mentioned above, observed that recovered articles cannot be termed as stolen articles and goldsmith, from whom recovery of the ornaments made also not supported the case of the prosecution. Learned Magistrate has also observed that gold, which is seized appears to be in the form of lagad and not in the form of ornaments. The learned Magistrate has observed that the prosecution has failed to establish that the said lagad/bar was prepared by melting the stolen gold ornaments only. Even though such observations are made in para 9 of the judgment, the learned Magistrate has held that the goldsmith i.e. present applicant is entitled for the said golden bar. In criminal revision, noticing this disparity, the Adhoc Additional Sessions Judge, has rightly quashed and set aside the order passed by the Magistrate, as aforesaid, to the extent of delivery of said property to the present applicant goldsmith. However, further directed that the said bar be

returned to the respondent-complainant.

7. Learned counsel for respondent No.2 complainant submits that even though the ornaments were not recovered, as they were, the golden bar is recovered from the applicant goldsmith. It is the prosecution case that the original accused sold the said golden jewellery to the applicant goldsmith and accordingly during the course of investigation, the police seized the golden bar, weighing about 45 grams from the applicant goldsmith. Even the revisional Court has observed in the said judgment of acquittal that the ornaments stolen from the house of the complainant also weighing 45 grams.

8. The learned Adhoc Additional Sessions Judge has rightly quashed and set aside the order of Magistrate to the extent of delivery of Muddemal property i.e. golden bar to the present applicant goldsmith. However, the learned Sessions Judge has committed error in directing that the golden bar, weighing 45 grams be returned to the complainant. The applicant was the prosecution witness in the said case and he has not supported the case in any manner and therefore, the prosecution could not establish that the accused in the said case sold the stolen ornaments to the applicant goldsmith. Simply because the weight of the golden bar is the same

as to the stolen golden jewellery, that cannot be a ground to return the said golden bar to the complainant in absence of any identification of the jewellery or in absence of any evidence that after jewellery being sold to the applicant goldsmith, he converted it into the said golden bar. In view of the above, this Court is left with no other alternate but to confiscate the said golden bar to the State. Hence, I proceed to pass the following order:-

O R D E R

- I. Criminal application is hereby partly allowed.
- II. The judgment and order dated 26.7.2007, passed by the learned Adhoc Additional Sessions Judge, Aurangabad in Criminal Revision No. 188 of 2005 is hereby quashed and set aside to the extent of direction to return the golden bar, weighing about 45 grams to the respondent complainant on his executing a bond of Rs.20,000/- for a period of one year.
- III. Instead of that, it is directed that the said golden bar, weighing about 45 grams be confiscated to the State Government and it be delivered to the nearest Gold Control Officer or the Officer above the rank of

Superintendent of Central Excise for being dealt with the provisions of Gold Control Act, 1968.

- IV. In the light of above, learned Magistrate at Aurangabad shall take appropriate steps for recovery of said Muddemal property, which is already delivered to the present applicant, for giving effect to this order.
- V. Rule made absolute in the above terms.
- VI. Criminal application is disposed of accordingly.

(V. K. JADHAV, J.)

rlj/