

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 4244 OF 2003

Vijay Raghobaji Ninawe

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. A.G.Sabnis, Sr. Advocate for the Applicant
Ms. R.M.Gadhvi, APP for the Respondent-State.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 5th JANUARY, 2016.**

P.C.

1. By this application under Section 482 of Cr.P.C. the applicant herein has sought to set aside and quash the impugned order dated 29.9.2003 passed by the learned Addl. Sessions Judge, Gr.Bombay in Revision Application No. 671 of 2003 and further to hand over to him the properties viz. CPU. Laptop, Scanner, FD Receipts, documents of row houses, gold ornaments, car etc which were seized in Crime No.68 of 2003 registered at RCF Police Station.

2. The applicant herein had lodged an FIR dated 7.6.2003 at RCF Police Station, Mumbai alleging that the respondent no.1 had created various e mail-IDs and had induced him to deliver sum of Rs.95 lakhs by deceiving him that he had been impleaded in suicide case.

3. Pursuant to the said FIR crime No.68 of 2003 under Section 420, 465, 467, 468, 469, 475, 474 of the Indian Penal Code r/w. Section 67 of the Information Technology Act was registered. In the course of investigation, the investigating agency recovered and seized several properties from the possession of the respondent no.2. The applicant herein filed an application and sought return of the said property. By order dated 15.10.2003 the learned Metropolitan Magistrate, 37th Court at Esplanade, Mumbai directed the police to hand over the property to the applicant herein on furnishing the requisite bonds. The respondent no.2 challenged the said order in Revision Application No.671 of 2003. The learned Sessions Judge partly allowed the application and ordered to hand over the possession of jewellery/ornament of the wife of the respondent no.2,

to respondent no.2 on executing bond of Rs.1,50,000/- and with further direction that the same should be made available if required in the course of investigation.

4. The learned Sr. Counsel for the applicant has submitted that the order passed under Section 451 of Cr.P.C. was interim order and that the revision itself was not maintainable. He has further submitted that the property which was seized from the possession of the respondent no.2, was purchased from the money received from the applicant by deceiving him that he was responsible for the suicide of Rita Basu.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties. At the outset it may be mentioned that Section 451 of Cr.P.C. deals with disposal of property during the pendency of investigation, inquiry and trial, whereas Section 452 deals with the disposal of property at the conclusion of enquiry or trial. Section 457 gives power to the court to pass appropriate orders when the properties are not

produced before the court. In ***Sunderbhai Ambalal Desai vs. State of Gujrat 2003(1) CTC 175*** the Apex Court has held that the power under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes namely, the owner of the articles would not suffer because of the property remaining unused or with the police station. The Apex Court held that keeping the property recovered and seized in the course of investigation either in the station house or in the court house affects the interest of the property owners and diminishes the value of the property itself. The Apex Court has directed guidelines for speedy disposal of such property in an appropriate manner.

6. Reverting to the facts of the present case, the records reveal that pursuant to the FIR lodged by the applicant herein, Crime No.68 of 2003 was registered and the properties viz. CPU, Laptop, Scanner, FD Receipts, Gold ornaments, mobile phone, documents of row house, FD receipts, palio car, as well as cash worth Rs.10,50,000/- were recovered from the possession of the respondent no.2. The

applicant had claimed the said property mainly on the ground that the said properties were purchased by the respondent no.2. from the amount received by him by blackmailing the applicant. It is to be noted that the allegations levelled by the applicant are yet to be proved. Hence, at this stage there is no material on record to indicate that the property which was recovered from the possession of the respondent no.2 either belongs to the applicant or that the same was purchased from the money received from the applicant. The learned Sessions Judge was therefore perfectly justified in rejecting the request of the applicant for release of the said property in his favour. Suffice it to say, that the order under Section 451 of Cr.P.C. is only an interim order intended to preserve the property pending the trial. The learned Sessions Judge has already directed the respondent no.2 to furnish a bond equivalent to the value of the property. The impugned order is not illegal and does not warrant any interference.

7. In the circumstances, the application is hereby dismissed.

(ANUJA PRABHUDESSAI, J.)