

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.923 of 2004

Omkarsingh Sajjan Singh Jat & Anr .. Appellants

Versus

The State of Maharashtra & ors .. Respondents

WITH

CRIMINAL APPEAL NO.1024 OF 2004

Milind Malhar Shringarpure & ors .. Appellants

Versus

The State of Maharashtra & ors .. Respondents

Mr.H.K.Prem, Advocate for the appellant in Cr.Appeal 923/04.

Mr.Raja Thakare with Mr.Prathamesh Samant, Advocate for respondent nos.3 to 5 in Cr.Appeal 923/04.

Mr.R.B. Mokashi i/b Shri Narichania, Advocate for respondent no.6 in Cr.Appeal 923/04

Mr.Raja Thakare with Mr.Prathamesh Samant, Advocate for the appellant in Cr.Appeal 1024/04.

Mr.R.B. Mokashi i/b Shri Narichania, Advocate for respondent no.4 in Cr.Appeal 1024/04.

Mrs.P.P. Bhosale, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

JUDGMENT RESERVED: 6th APRIL 2016

JUDGMENT PRONOUNCED: 27th APRIL 2016

JUDGMENT:

1 These two Appeals can be conveniently disposed of by this common judgment, as both arise out of one and the same judgment – i.e. judgment and order dated 26th July 2004 delivered by the Addl. Sessions Judge at Bombay in Sessions Case No.1505/99.

2 The appellants in Criminal Appeal No.923/04 were the accused nos.2 and 10, respectively, in the said case, while the appellant no.1 in Criminal Appeal No.1024/04 was a witness (P.W.8) therein.

3 The circumstances giving rise to these Appeals and the facts necessary to understand the controversy are as under :-

On 6th July 1994, a dacoity took place and cash of Rs.12,63,100/- belonging to Killburn Engineering Ltd (respondent no.6 in Criminal Appeal No.923/04 and respondent no.4 in Criminal Appeal No.1024/04) was robbed from the possession of its employees. On the First Information Report lodged by one of the employees, investigation commenced. In the course of investigation, cash of Rs.7,07,805/- was seized by the police claiming it to be a part of the robbed property. Though the

Investigating Agency named 10 persons as the accused, actually only the appellants in Criminal Appeal No. 923/04 i.e. Omkarsingh Jat (accused no.2) and Smt.Jarjinder Jat (accused no.10) were prosecuted, as one of the others died and seven either absconded, or could not be arrested at all. The appellant no.1 and the appellant no.2 (original accused nos.2 and 10 respectively) are related to each other as husband and wife.

4 The learned Addl. Sessions Judge framed a charge in respect of offences punishable under sections 120B IPC, 395 IPC, 307 IPC r/w section 34 of the IPC and section 353 IPC r/w section 34 of the IPC against the appellant no.1, and a charge of offences punishable under sections 120B of the IPC and 414 of the IPC against the appellant no.2. *Thus, the case of the prosecution was that the appellant no.1 (hereinafter referred to as 'accused no.2') had taken part along with other accused in the actual dacoity, assault etc, and the appellant no.2 (hereinafter referred to as 'accused no.10') had conspired with and assisted the accused no.2 in concealing and/or disposing of the property obtained by the accused no.2 by committing the dacoity in question.*

5 The prosecution examined totally 13 witnesses during the trial. *The learned Addl. Sessions Judge, upon consideration of*

the evidence adduced, held that the prosecution had failed to prove that the accused persons had committed the offences with which they were charged, or any of them. He, however, held that the accused persons had committed an offence punishable under section 124 of the Bombay Police Act, 1951 (now Maharashtra Police Act). As such, he convicted both of them of the said offence and sentenced them to suffer Simple Imprisonment till rising of the Court, and to pay a fine of Rs.500/- each, in default to suffer Simple Imprisonment for one month. The learned Special Judge acquitted the accused persons of all the other offences, including the offence punishable u/s.414 of the IPC (with which the accused no.10 was charged).

6 During the trial, consistently with the case of the prosecution, evidence was adduced to show that the accused no.10 had purchased a row house bearing No.RH/1/L/3 in Sector No.7, Vashi, from Milind Shringarpure (PW 8) – the appellant no.1 in Criminal Appeal No.1024/04. The consideration therefor was Rs.7,00,000/- which was paid by the accused no.10 to the said Milind Shringarpure.

7 Apart from challenging the correctness of their conviction as recorded by the learned Addl. Sessions Judge, the

appellants in Criminal Appeal No.923/04 are also challenging the order of disposal of the property, as passed by the learned Sessions Judge under the provisions of section 452 of the Code of Criminal Procedure. (Code). Thus, the said Appeal is a composite appeal under section 374 as well as under section 454 of the Code. Criminal Appeal No.1024/04 is one under section 454 of the Code and the challenge therein is limited only to the order of disposal of the property.

8 It would be proper to reproduce here the order passed by the learned Addl. Sessions Judge with respect to the disposal of the property.

(iv) Muddemal property cash amount of Rs.7,07,805/- be returned to Killburn Engineering Ltd, Mulund. If the said Company is not in existence, the said amount has to be forfeited to the State Government.

(v) Sr.P.I.Bhandup police station is directed to seize and attach the row house RH/1/L/3 in Sector No.7, Vashi, New Mumbai from whoever may be in possession thereof or even breaking the lock within 30 days from today and report this court accordingly and to hand over the possession of the said row house to PW 8 Milind Shringarpure, Mita Milind Shringarpure and Sushma Vinayak Gupte within one month from

the date on which the appeal period is over. Sr.P.I to act upon the copy of this judgment sent by this Court.

(vi) Other muddemal property and the R&P of this case be preserved for the trial of absconding accused.

Thus, the learned Addl. Sessions Judge directed the cash of Rs.7,07,805/- seized in the course of investigation to be 'returned' to the Company – Killburn Engineering Limited. As regards the row house which had been purchased by the accused no.10, the Addl. Sessions Judge directed the possession thereof to be handed over to PW 8 – Milind Shringarpure, his wife Neeta and his mother-in-law Smt.Sushma. The learned Addl. Sessions Judge went to the extent of directing the Sr. Inspector of Police, Bhandup Police Station to seize and attach the row house from '*whoever may be in possession thereof*' and '*even breaking the lock*'.

9 It is this order for disposal of the property that has been challenged by the present Appeals.

10 The case of the appellants in Criminal Appeal No.1024/04 is simple. According to them, out of the seized cash, an amount of Rs.6,56,800/- belonged to them and since it was taken charge of by the police from the appellant no.1, it was the

appellant no.1 who was entitled to receive the same when the offences with which the accused were charged, were not proved. The prayer of the appellants in Criminal Appeal No.1024/04 is that the order directing the disposal of the property, to the extent that it directed return of cash of Rs.6,56,800/- to Killburn Engineering Co.Ltd, be set aside and that the said cash be handed over to the appellants.

11 The challenge of the appellants in Criminal Appeal No.923/04 i.e. accused nos.2 and 10 is to that part of the order whereby the Sr. Inspector of Bhandup Police Station has been directed to seize and attach the said row house, and hand over the possession thereof to Milind Shringarpure (PW 8) and the other appellants in Criminal Appeal No.1024/04. Of course, the order of conviction of the accused nos.2 and 10 in respect of an offence punishable u/s.124 of the Maharashtra Police Act is also seriously challenged.

12 I have heard Mr.H.K. Prem, learned counsel for the appellants in Criminal Appeal No.923/04. I have heard Mr.Raja Thakare, learned counsel for the appellant in Criminal Appeal No.1024/04. I have heard Mr.R.B. Mokashi, learned counsel for

the Company – Killburn Engineering Ltd – the respondent no.6 in Criminal Appeal No.923/04 and respondent no.4 in Criminal Appeal No.1024/04.

13 Mr.Prem contended that the order of conviction of the appellants and the order regarding the disposal of the property is patently illegal and untenable. He submitted that in the first place, the appellants could not have been convicted of an offence punishable u/s.124 of the Maharashtra Police Act when they were not charged of, or accused of having committed the said offence. He also submitted that the row house, the possession of which has been ordered to be taken by police for handing it over to Milind Shringarpure (PW 8) (who is the appellant No.1 in Criminal Appeal No.1024/04) and others, is patently illegal and absurd, as the row house in question had not at all been seized at any time in the course of investigation. He also contended that since the said row house was not seized in the course of investigation, and no offence had been committed with respect to the row house, the learned Addl. Sessions Judge had no jurisdiction to pass any order in respect of the disposal of the said row house purportedly in exercise of the powers conferred on a Court by section 452 of the Code. He also submitted that the order directing the police to take

possession of the said row house by breaking open the lock and by dispossessing whosoever would be in possession is totally illegal, unjust and shocking.

14 Mr.Thakare, learned counsel for the appellant in Criminal Appeal No.1024/04 also contended that the impugned order is illegal. He submitted that the cash in question i.e. cash of Rs.6,58,000/- (which forms part of the cash of Rs.7,07,805/- recovered in the course of investigation) which had been seized from the possession of Milind Shringarpure (appellant no.1 in Criminal Appeal No.1024/04) ought to have been returned to Milind Shringarpure only, and it could not have been returned to the Company – Killburn Engineering Ltd. He submitted that no nexus between the cash of the said Company which was robbed and the cash recovered from Milind Shringarpure was established during the trial, and as such, there was no question of handing over the cash belonging to and recovered from appellant no.1 Milind Shringarpure to the Company Killburn Engineering Ltd.

15 Mr.R.B. Mokashi, the learned counsel for the Company Killburn Engineering Ltd, however, supported the order. He submitted that the impugned order was proper and legal.

According to him, though the trial Court was unable to convict the appellants of dacoity or robbery, and though the trial court could not come to the conclusion that the accused no.2 had committed the dacoity, and that he had handed over part of the robbed property i.e. cash to his wife—the accused no.10, the trial Court was also convinced that the said row house had been purchased by the accused no.10 by ill-gotten wealth. According to him, since the Court was convinced that the property of the Company Killburn Engineering Ltd had indeed been robbed, the trial Court has rightly directed the ill-gotten amount by which the accused no.10 had purchased a row house to be returned to the said Company.

16 Indeed, the order regarding disposal of property, as passed by the learned Addl. Sessions Judge is rather curious. I have, therefore, carefully examined the impugned judgment and the observations made by the learned Addl. Sessions Judge to examine the logic behind the order regarding disposal of property as passed by him.

17 Before discussing this aspect of the matter, it must be made clear that the order of acquittal of the accused nos.2 and 10 in respect of the offences with which they were charged, has

become final. That order has not been subjected to any challenge by way of filing any Appeal in this Court. Thus, the conclusion of the learned Addl.Sessions Judge that the accused no.2 and/or accused no.10 cannot be said to have committed the offences in question, has become final and has to be accepted. In other words, while considering the correctness of the impugned order, one must necessarily proceed on the basis that there is nothing to connect the accused no.2 with the alleged dacoity, and consequently, there was nothing to show that the accused no.10 had assisted the accused no.2 in concealing or disposing of *stolen property*.

18 To have clarity about the reasoning of the learned Addl. Sessions Judge, and to remove any doubt that the learned Addl. Sessions Judge specifically concluded that neither the accused no.2 committed the dacoity, robbery, nor did the accused no.10 assist the accused no.2 in disposing of stolen property, the points for determination, as framed by the learned Judge and his findings thereon, be reproduced here :-

Sr.No. POINTS

FINDINGS

- 1) Does prosecution prove that on or about 6.7.94, accused no.2 along with his eight companions agreed to do an illegal act of commission of the dacoity by forming a criminal conspiracy and the object of the said conspiracy was to loot the cash amount belonging to the Company of the complainant ?

: In the negative

- 2) Does prosecution prove that on 6.7.94 at about 12.00 noon, Nahur road, in front of Indira Steel yard, Bhandup (West) Mumbai-78, accused no.2 along with his eight absconding companions conjointly committed dacoity in respect of the cash amount of Rs.12,63,100/- at the point of revolver, riffle and the choppers ? : In the negative
- 3) Does prosecution prove that accused no.2 along with his eight absconding companions, on aforesaid date, time and place, while committing dacoity, assaulted the complainant by means of the choppers and caused injuries to the complainant to his neck and the leg, which was dangerous to life and attempted to commit murder of the complainant ? : In the negative
- 4) Does prosecution prove that after commission of the said dacoity, the complainant was chasing along with the police officer Mahadev Patil, accused no.2 along with his companions assaulted and used force against the police officers while they were discharging their duty in the official capacity with intention to prevent and deter them from discharging their official duties ? : In the negative
- 5) Does prosecution prove that accused no.10, during the course of same transaction on 8.7.94 at Navi mumbai, Vashi purchased a row house from one Shringarpure for Rs.7 lacs which is a stolen property and knowing and having reason to believe, voluntarily assisted accused no.2 in disposing off the stolen property ? : In the negative
- 6) Whether any other offence has been committed by the accused ? Offence u/s.124 of B.PAct.
- 7) What order ? See the final order.

19 The question then arises is *what was the basis on which the learned Addl. Sessions Judge thought the cash*

recovered from appellant no.1 Milind Shringarpure should be handed over to Killburn Engineering Ltd., when he never came to the conclusion that the cash received by Milind Shringarpure from the accused no.10 was the cash that had been robbed by the accused no.2 and his associates from the employees of Killburn Engineering Ltd.? It may be emphasized that the case of the Investigating Agency/prosecution was that the accused no.2 was one of the dacoits who robbed the property of Killburn Engineering Ltd, and that the part of the said property i.e. cash which had come into the hands of the accused no.2 was given by him to his wife, the accused no.10; and that the accused no.10 had purchased the said row house from the appellant no.1 – Milind Shringarpure by paying this amount i.e. the amount earned by the accused no.2 by committing the dacoity. The learned Addl. Sessions Judge specifically refused to accept this case of the prosecution and held that the same was not proved.

20 I have carefully examined the impugned judgment. The prosecution witnesses Suhas Karve (PW 4) and Suhas Nadkarni (PW5) who acted as panchas had said that Milind Shringarpure had handed over cash to the police on different occasions in their presence which was seized by the police under

panchnamas (Exhibit-12 and Exhibit-13). Milind Shringarpure himself was examined as a prosecution witness no.8 and he said that he had sold the row house in question to the accused no.10 for which the accused no.10 had paid an amount of Rs.3,50,000/- to him by cash and an amount of Rs.3,50,000/- by a demand draft. That an agreement to sale was executed by his wife and mother-in-law who owned the said row house and that, the key of the said row house had been handed over by him to the accused no.10 on the date of the agreement i.e. 8th July 1994. The prosecution had also examined one Ajay Jain (PW 10) who had acted as a broker in the transaction of the said row house, and he also said that the agreed price of the row house was Rs.7,00,000/- and the mode of payment was Rs.3,50,000/- by cash and Rs.3,50,000/- by demand draft.

21 The accused no.10 took a stand during her examination under section 313 of the Code that she had purchased the row house from Milind Shringarpure not for Rs.7,00,000/- but only for Rs.3,50,000/-. According to her, that amount had been earned by her by doing the business of catering and by giving tuitions. According to her, this amount had been kept by her in a bank which was withdrawn and then paid to

Milind Shringarpure. Thus, in short, the accused no.10 claimed that she has paid not Rs.7,00,000/- but only Rs.3,50,000/- to Milind Shringarpure though Milind Shringarpure claimed to have received Rs.7,00,000/- for the row house. *Apparently, this made the learned Addl. Sessions Judge suspicious as he felt that the accused no.10 was deliberately not disclosing the real purchase price of the row house.*

22 Though the learned Judge did not believe the accused no.10 in respect of the amount paid by her to Milind Shringarpure (PW 8), and though he felt that actually the accused no.2 had paid Rs.7,00,000/- to Milind Shringarpure, and though he entertained some suspicion against the accused no.10 by reason of her claiming to have paid less than what she had actually paid, *he categorically held that the amount paid by her to Milind Shringarpure (PW 8) was not the property robbed by committing the dacoity in question.* He categorically held that :-

“That, therefore, in my opinion, prosecution failed to establish that the cash amount of Rs.7,00,000/- which was in possession of accused no.10 was stolen property out of the dacoity of the cash amount belonging to the Company of PW 1”

(para 45 of the impugned judgment)

23 When a person accused of theft, robbery or dacoity prosecuted and tried is acquitted of the offences, the property recovered in the course of investigation ordinarily should go back to the persons from whom it was recovered. Going by this, the cash recovered from Milind Shringarpure ought to have gone back to him and the other cash to the persons from whom it was collected.

24 It would be, therefore, necessary to see what made the learned Addl. Sessions Judge to deviate from this normal course and to direct the row house to be given back to Milind Shringarpure from whom the accused no.10 had purchased the same and to direct that the amount paid by the accused no.10 to Milind Shringarpure for the purchase thereof to be given to the Killburn Engineering Ltd.

25 Before proceeding further, it may be examined *whether, when the accused persons were not charged of an offence punishable under section 124 of the Maharashtra Police Act, their conviction of that offence was proper, in accordance with law and justified.*

26 Admittedly, no charge of an offence punishable under section 124 of the Maharashtra Police Act was framed against any of the accused persons. Even if, that framing of charge is not mandatory for the said offence, the same being a summons case is accepted, the particulars of the said offence and the substance thereof, was required to be explained, which was not done.

27 Ordinarily, a person can be convicted only in respect of an offence of which he is charged. The purpose of the requirements in the Code of Criminal Procedure regarding framing of charge (or to state and explain the particulars of offence and substance of accusation if the case be a summons case) is to give the accused a notice of the case which he has to meet. Section 222 of the Code is the only section which makes it possible to convict a person of an offence though such person is not charged with the offence of which he is held guilty. Section 222 of the Code provides that when a person is charged with a *major offence*, he can be convicted of a *minor offence* under certain circumstances mentioned in that section, even though he is not charged with it. The learned Judge has not referred to the provisions of section 222 of the Code, but evidently he was relying thereon to convict

the accused nos.2 and 10 of an offence punishable under section 124 of the Maharashtra Police Act though none of them was charged with the said offence. The reasoning of the learned Judge, in that regard, is found in paragraph no.51 of the impugned judgment which is worth reproducing here :-

“Section 124 of Bombay Police Act 1951 deals with possession of stolen property or property obtained fraudulently. In case of possession of stolen property there is dishonest intention. It is his wrongful gain. The person who is in possession of property obtained fraudulently also has wrongful gain within the meaning of section 23 of I.P.C. In wrongful gain the person acquires property and retains wrongfully. When there is wrongful gain in both cases, section 124 is abbreviated form and no charge under section 124 is required to be framed. Section 124 is lesser section of section 410 of the IPC. Section 410 is lesser of section 395, 392 and 380 of I.P.C. Therefore, without framing charge, being a lesser section, accused can be convicted under section 124 of Bombay Police Act, 1951.

28 It is not possible to agree with the learned Addl. Sessions Judge that the offence punishable under section 124 of the Maharashtra Police is a minor offence ('lesser section' as per the terminology used by the learned Addl. Sessions Judge) of the offence of dacoity, or that of an offence punishable under section

414 of the IPC. To understand the correct position, a closer look at the provisions of section 222 of the Code, is necessary. The head note with which section 222 opens is “**When offence proved included in offence charged**”.

Section 222 of the Code reads as under :-

222 When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

(a) A is charged, under section 407 of the Indian Penal Code (45 of 1860), with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.

(b) A is charged, under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

29 The expression “minor offence” occurring in sub-sections (1) and (2) to section 222 has not been defined either in this section, or anywhere else in the Code. It is, however, well settled that the gravity of punishment is not the test to decide whether a particular offence is said to be a major or minor offence. *The Minor offence certainly does not mean an offence for which a lesser punishment has been prescribed.* The section does not refer to the gravity of punishment at all, and as such, to determine what constitutes a “minor offence” within the meaning of section 222, one must examine the wordings of sub-sections (1) and (2) thereof. It is because an offence can be treated as “minor” within the meaning

of the said section with reference to the “*main*” or “*major*” offence referred to therein and not independently of it. The following may be given as an illustration of what sub-section (1) of section 222 speaks of:- Certain persons are being tried for having committed dacoity. The ingredients of dacoity are such that some of them taken together would constitute an offence of theft. Some of the ingredients taken together, would constitute robbery. If all the ingredients are proved, the offence would be one of dacoity which would be the *main* or *major* offence. If, however, some of the ingredients are not proved, but some ingredients which constitute the offence of theft, or which constitute the offence of robbery are proved, the accused can be punished for the offence of theft, or for robbery, as the case may be, though he is not separately charged of theft or robbery. It is because the ingredients of offences constituting theft as also robbery are included in the ingredients constituting the offence of dacoity. Thus, the offence of theft or robbery would be a “minor offence” when compared to the major offence of dacoity. Sub-section (2) of section 222 of the Code contemplates cases where a person is charged with an offence, and facts are proved which reduce it to a minor offence. This may happen when a person is charged of an offence of murder, but the proved facts reduce the offence of culpable homicide not

amounting to murder, or that of causing grievous hurt by dangerous weapon etc. A person charged of an offence of murder which is punishable under section 302 of the IPC, can, therefore, be convicted of an offence punishable under Section 304 IPC, or 326 IPC or 324 IPC etc, as the case may be, though no separate charge is framed under any of these sections.

30 A careful study of the provisions of section 222 reveals that under sub-section (1) thereof, all the particulars which constitute a minor offence must be present in the major offence; and it is only if that is the case, the offence can be treated as 'minor.' The phrase – “a complete minor offence” used in sub-section (1) is significant. Therefore, if offence 'A' constitutes some additional ingredients which are not at all in the offence 'B', the offence 'A' cannot be said to be a minor offence in relation to the offence 'B'.

31 It is in this background, we may examine the ingredients of an offence punishable under section 124 of the Maharashtra Police Act. Section 124 reads as under :-

124 Possession of property of which no satisfactory account can be given. Whoever has in his possession or conveys in any manner, or offers

for sale or pawn, anything which there is reason to believe is stolen property or property fraudulently obtained, shall, if he fails to account for such possession or to act to the satisfaction of the Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine 1 [which may extend to one year but shall not except for reasons to be recorded in writing, be less than one month and shall also be liable to fine which may extend to five hundred rupees].

Thus, to attract the penal liability provided for in the said section, three ingredients must be satisfied. Firstly, the accused must be in possession of the property. Secondly, the property must be one in respect of which the Court has reason to believe that it is “stolen property or property fraudulently obtained”, and thirdly, the accused must be unable to account for such possession or act to the satisfaction of the Magistrate. The offence of dacoity takes place when 5 or more persons conjointly commit robbery (Section 391 of the IPC). Robbery consists either of theft or extortion as one of its ingredients (Section 390 of the IPC). Property earned by committing theft or robbery would qualify as stolen property, but property fraudulently obtained will not. Section 124 of the Maharashtra Police Act speaks of not only the property which is

suspected to be “stolen” but also property “fraudulently obtained.”

It is therefore, not possible to hold that all the ingredients of the offence punishable under section 124 of the Maharashtra Police Act are included in the offence of dacoity, and that, the offence punishable under the Maharashtra Police Act constitutes a complete minor offence of the offence of dacoity.

32 In my opinion, the offence punishable under section 124 of the Maharashtra Police Act cannot be treated as a minor offence in relation to the offence of dacoity within the meaning of section 222 of the Code. The nature of the offence punishable under section 124 of the Maharashtra Police Act is quite different from the offence of dacoity of which theft and robbery could be treated as minor offences. The offences of theft and robbery relate to a Specific Act. Section 124 of the Maharashtra Police Act does not require proof of any specific act done by the accused and all that it contemplates is that an accused should have in his possession (or convey in any manner etc) anything which there is reason to believe, is stolen property, or property fraudulently obtained. It is not necessary to actually prove the property to be stolen property, or property fraudulently obtained, much less, it is required to be proved that the property had been stolen, or

fraudulently obtained by the accused himself. What is contemplated by section 124 is that the Court has to have a reason to believe the property to be stolen or fraudulently obtained. Once the Court has reason to believe the property to be stolen or fraudulently obtained, then it would be for the person charged of that offence to satisfactorily account for possession of such property. The culpability of a person accused of having committed an offence punishable under section 124 of the Maharashtra Police Act, arises not on account of his being found with something which there is a reason to believe to be stolen property or property fraudulently obtained and the failure of the person to satisfactorily account for such possession. Thus, the criminality attaches to the possession only *after* the failure to satisfactorily account for such possession. In my opinion, the essential ingredients of the offence punishable under section 124 of the Maharashtra Police Act being different from, and not being included in the offence of dacoity, the offence punishable u/s.124 of the Maharashtra Police Act, cannot be treated as a minor offence in relation to the offence of dacoity for the purpose of section 222 (1) of the Code. Since there is no other provision in the Code permitting an accused to be convicted when there being a charge or accusation against him with respect of that offence, the conviction of the accused nos.2

and 10 in respect of an offence punishable under section 124 of the Maharashtra Police Act was clearly contrary to law and not tenable.

33 The nature of offence contemplated by section 124 of the Maharashtra Police Act is quite different from the offence of dacoity, robbery or theft. By convicting the accused without their being any blame, charge or accusation of an offence punishable under section 124 of the Maharashtra Police Act, the accused persons have been denied of a fair opportunity of meeting the said accusation. The learned Judge has emphasized the inability of the accused persons to state from where they had received the cash of Rs.7,00,000/- which had been used for purchasing the said row house. Even though the learned Judge disbelieved, or at any rate, did not accept the prosecution case that the amount with which the accused no.10 had purchased the row house, formed a part of the amount earned by the accused no.2 by committing the dacoity in question, he still held that the said property was ill-gotten wealth of the accused no.10. The basis for coming to such a conclusion cannot be gathered from the impugned judgment. The learned Judge observed that he had called upon the accused nos.2 and 10 to explain the possession of the cash of Rs.7,00,000/-

and that, the accused no.2 had replied that he did not know anything about it, and that the accused no.10 had stated that it was the money earned by her by doing the business of catering and by giving tuitions. The learned Judge noted the explanation given by accused no.10 that she had withdrawn the sum of Rs.3,50,000/- from her bank account, and that, she had been paying Income tax since last 10 – 12 years. The learned Judge, in that context, observed that this explanation was only in respect of cash of Rs.3,50,000/-, and not with respect to the entire cash of Rs.7,00,000/- which was the amount actually paid by the accused no.10 towards the price of the row house. It is true that since it appears that the accused no.10 attempted to show that she had paid only Rs.3,50,000/- towards the purchase price of the row house, though she had actually paid Rs.7,00,000/-, a suspicion about the cash of Rs.3,50,000/- being *unaccounted* can be entertained. However, that by itself would not be a sufficient reason to believe that the amount of Rs.3,50,000/- was either “stolen property” or “property fraudulently obtained.” Apart from the fact that this cannot be accepted, there is no consistency in the reasoning of the learned Judge, inasmuch as though his reasoning shows that only the cash of Rs.3,50,000/- was suspected to be stolen or fraudulently obtained, he is actually directed the entire

cash of Rs.7,07,805/- to be returned to Killburn Engineering Ltd. Anyway, what is of crucial importance is that the accused persons have been deprived of an opportunity to explain their possession of the cash in question. *When the prosecution case against them was specific and to the effect that 'the accused no.2 had taken part in the dacoity in question, and that part of the property earned by committing dacoity had been given by him to his wife – accused no.10, and that it is by that property that the accused no.10 had purchased row house from Milind Shringarpure (PW 8)'; and when this was the charge that the accused persons had to meet, they were only required to focus on the absence of any link or connection between the property of Killburn Engineering Ltd that was robbed in the dacoity and the cash paid to Milind Shringarpure.* The accused persons could not have had any notice that they have to generally show as to how the accused no.10 had acquired the property in question. Thus, non-framing of a charge or not stating and explaining the particulars of offence and substance of accusation in respect of the offence punishable under section 124 of the Maharashtra Police Act has certainly caused prejudice to the accused persons. Their conviction in respect of an offence punishable under section 124 of the Maharashtra Police Act is, therefore, required to be interfered with.

34 Coming to the question of the disposal of the property, the learned Judge categorically held that the prosecution had failed to establish that the accused no.2 had conjointly with his companions committed dacoity. (para -43 of the impugned judgment).

35 It has already been seen that he also observed that the prosecution had failed to establish that the cash amount of Rs.7,00,000/- with which the accused no.10 had purchased the row house was the cash belonging to the Killburn Engineering Ltd. Even after holding that the accused nos.2 and 10 were guilty of an offence punishable under section 124 of the Maharashtra Police Act, the learned Judge categorically refused to connect the amount of Rs.7,00,000/- to the amount which had been robbed by committing the dacoity in question. It is, therefore, difficult to understand that on what basis he directed the cash recovered from Milind Shringarpure to the said Company. This would be incorrect even if it is accepted which is for the sake of arguments that, that the cash of Rs.7,00,000/- by which the accused no.10 purchased the row house was either stolen property or property fraudulently obtained. So long it was not the cash of Killburn Engineering Ltd

that had been robbed by commission of dacoity and so long there was nothing to show that the dacoits or one of them had handed over the robbed cash to the accused no.10 which she had used for purchasing the said row house, there was no question of returning the cash to the said Company.

36 Mr.Mokashi, for the Company Killburn Engineering Ltd contended that there was sufficient material to show that the accused no.2 had indeed taken part in the dacoity. He contended that the accused no.2 had sustained a bullet injury and that by itself, was a strong piece of evidence against the accused no.2 showing his involvement in the dacoity. He also contended that there was sufficient indication of the fact that the row house in question had been purchased from out of the property that had been obtained by committing the dacoity in question. In this context, it may be observed that these are not the findings arrived at by the learned Addl. Sessions Judge. On the contrary, he has categorically held that there was no nexus between the cash by which the row house was purchased and the cash that had been robbed. The arguments advanced by Mr.Mokashi would suggest that the accused no.2 should have been held guilty of dacoity, but

the same has not been done. As observed earlier, the order of acquittal of the accused of the charges of dacoity etc. has become final, the State not having preferred any Appeal from the said order of acquittal. Therefore, the propriety or correctness, as also the legality of the order regarding disposal of property, as passed by the learned Addl. Sessions Judge, has to be examined consistently with the findings arrived at by him. The order cannot be claimed to be correct or justified on the basis that it was the cash of the Killburn Engineering Ltd. which had been robbed, that was used for purchasing the row house.

37 I have gone through the observations made by the learned Judge with respect to the disposal of the property (paragraph nos.62 and 63 of the impugned judgment). Strangely, in paragraph no.63, the learned Judge recorded that Shringarpure had requested the refund of the amount of Rs.6,56,800/- received by him from the accused no.2, but observed that Shringarpure was not entitled to get the said amount as it was “stolen property” or “property obtained fraudulently.” The learned Judge then observed that the said property has to be paid to the Company of the complainant. This is not logical, because even assuming that

the cash in question was stolen property (which is, incidentally not the finding of learned Judge, and his finding is that there was a *reason to believe* it to be stolen property) it was not proved, *even according to the learned Judge*, that it was the property stolen from the Company – Killburn Engineering Ltd. Therefore, logically, even if it was to be proved to be stolen property, it ought to have been returned to the person who was entitled to possess it i.e. the person from whose possession it was stolen. *Having held that there was no nexus between the properties stolen from the employees of Killburn Engineering Ltd, and the cash received by Milind Shringarpure from the accused no.10, there was no question of handing over the said cash to the said Company.*

38 To sum up, the conviction of the accused nos.2 and 10 with respect to the offence punishable under section 124 of the Maharashtra Police Act, was not proper or legal. They could not have been convicted of the said offence when they were not charged of the said offence, and no charge in that regard was ever framed against them and/or when the substance of accusation with respect to the said offence was never stated to them. The offence punishable under section 124 of the Maharashtra Police

Act cannot be considered as a “minor offence” in relation to the offence of dacoity within the meaning of section 222 of the Code. Convicting the accused nos.2 and 10 for an offence punishable under section 124 of the Maharashtra Police Act without framing a charge against them, or without explaining the particulars of offence to them, has deprived the accused persons of a proper and fair opportunity to meet the accusation. The order of conviction of the accused persons, therefore, is bad-in-law. As regards the disposal of the property, since the cash recovered from Milind Shringarpure, was not proved to be the cash stolen by commission of the dacoity in respect of the property of Killburn Engineering Limited, there was no question of handing over the cash to the said Company. Also, the learned Judge held that there was no connection between the accused no.2 and the said dacoity, and therefore, even if it was to be held that the accused no.10 had received the cash in question from the accused no.2 (which incidentally is **not** the finding), still, there was nothing to show that the cash had anything to do with the dacoity of the property of Killburn Engineering Ltd. The money used by the accused no.10 for purchasing the said row house, was not proved to be the money belonging to Killburn Engineering Ltd., or robbed in the

course of the dacoity in question. Under these circumstances, if still the learned Judge felt that the monies with which the row house had been purchased was property in respect of which there was a reason to believe it to be stolen or obtained fraudulently, he ought to have specifically tried the accused persons with respect to an offence punishable under section 124 of the Maharashtra Police Act. This not having been done, the impugned judgment and order is not tenable.

39 In the result, both the Appeals deserve to be allowed.

OPERATIVE ORDER IN 923 OF 2004

Appeal is allowed.

The impugned judgment and the order of conviction of the appellants, as also the sentences imposed upon them are set aside.

The appellants are acquitted of the offence punishable under Section 124 of the Maharashtra Police Act.

Their bail bonds are discharged.

Fine, if paid, be refunded to them.

The order directing the Senior Inspector of Police, Bhandup Police Station to seize and attach the row house; and to hand over the possession thereof to Milind Shringarpure, Mrs.Mita Milind Shringarpure and Smt.Shushma Vinayak Gupte (appellants in Criminal Appeal No.1024 of 2004) is quashed and set aside.

Appeal is disposed of accordingly.

OPERATIVE ORDER IN 1024 of 2004

Appeal is allowed.

The order directing the return of the cash of Rs.7,07,805/- to the Company - Killburn Engineering Ltd, is set aside.

Instead, it is directed that the cash of Rs.6,56,800/- therefrom shall be returned to the appellant no.1 Milind Shringarpure.

The remaining cash be returned to the persons from whose possession it was seized in the course of investigation.

Appeal is disposed of accordingly.

(ABHAY M. THIPSAY, J)