

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

CRIMINAL WRIT PETITION NO.2843 OF 2015

Shankar Tejaji Prajapati

.... Petitioner

versus

State of Maharashtra

... Respondent

Mr.Niranjan A. Mogle, Advocate for the Petitioner.

Mrs.Anamika Malhotra, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.

DATE : 13th DECEMBER, 2016.

P.C. :

1. In this writ petition order of the Metropolitan Magistrate, Vikhroli Court dated 04/05/2013 in C.C. No.229/N/12, so also the order dated 01/04/2015 passed by the Additional Sessions Judge, Greater Bombay, thereby rejecting the application for return of property after the conclusion of trial, are challenged. The present petitioner was arrested in two crimes i.e. 71/01 registered at Ghatkopar Police Station and 73/00 registered at Pantnagar Police Station for the offence punishable u/s 411 of IPC, i.e. for receiving stolen property. The petitioner was tried and is acquitted from C.R.No.73/00 of Pantnagar Police Station,

wherein the two gold bars weighing 300 gms was the stolen property and the gold bar weighing 150 gms is the stolen bar in C.R.No.71/01. Both the gold bars were seized by the police from Pantnagar Police Station and they were produced before the Court at the time of trial. The trial in C.R.No.73/00 was concluded in acquittal. However, in the said C.R. there were three accused and the two accused facing charges u/s 454, 457, 380 r/w 34 of IPC, are still absconding, hence this petitioner/accused alone was tried and trial concluded in his acquittal. However, at the time of judgment, the learned Magistrate did not pass any order of the disposal of the said property i.e. gold bar weighing 300 gms. The application made by the complainant for return of property of gold bar weighing 300 gms was rejected by the Court, so the application made by the present petitioner for the return of the property was also rejected. The said order was challenged by the present petitioner in revision before the learned Additional Sessions Judge, who refused to return the property on the ground that the trial of two other absconding accused is still pending.

2. After going through the order passed by the learned

Metropolitan Magistrate and the learned Additional Sessions Judge, I am of the view that the reasons given by the learned Judges cannot be faulted out. At this stage the said property is not to be returned to the present petitioner. Some time is required to be given to the police to arrest absconding accused and to produce them before the Court.

3. In order to substantiate my view, I would like to place certain facts in the C.R.No.71/01, wherein the gold bar weighing 150 gms was seized from the present petitioner. In the said C.R. of Ghatkopar Police Station, the present petitioner and those two accused persons were facing similar charges and those two accused are absconding. It is shocking that the chargesheet in C.R.No.71/01 of Ghatkopar Police Station is not yet filed because the investigating officer or the said police station has lost police papers in the said crime. However, the property i.e. the gold bar weighing 150 gms was intact with the police station and said property was returned to the petitioner on the ground that the chargesheet was not filed.

4. I direct Registrar Judicial to send this order to the Commissioner of Police, Mumbai and the Commissioner of Police, Mumbai is directed to look into the matter personally with serious follow up and do the needful. The petitioner is given liberty to move a fresh application for return of property two years hereafter.

5. Writ Petition is disposed off accordingly.

(MRIDULA BHATKAR, J.)