

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1131 of 2016**

1. Kailash @ Kailu S/o Hargun Das Bakhtani Aged About 28 Years R/o Sadar Bajar Dhamtari, Police Station Civil Lines, Dhamtari Civil & Revenue District Dhamtari, Chhattisgarh.
2. Manish Wadhwani S/o Shri Kamal Wadhwani Aged About 24 Years R/o Lalbagicha Dhamtari, Police Station Civil Lines Dhamtari Civil & Revenue District Dhamtari, Chhattisgarh.

---- Applicants**Versus**

State Of Chhattisgarh Through The District Magistrate Dhamtari Civil & Revenue District Dhamtari, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Sunil Sahu, Advocate.
For the Respondent/ State	:	Shri Sameer Behar, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****17.01.2017**

1. Heard the revision petition finally at the motion stage itself.
2. Learned counsel for the applicants submits that the applicants were prosecuted under Section 4A of the Public Gambling Act, 1867. In the investigation of the case, vide seizure memorandum (Ex. P/2), one mobile set with description of Vivo Company and cash amount of Rs.34,500/- alongwith other articles were seized from applicant Kailash @ Kailu. Similarly, from the possession of applicant No.2 - Manish Wadhwani vide Ex. P/3 one mobile set with description of Micromax Company and cash amount of Rs. 5,080/- alongwith other articles were seized. The police investigated the case and submitted the charge-sheet in the Court for prosecution of the applicants under Section 4A of the Public Gambling Act.

3. The applicants have been tried and acquitted of the charges under Section 4A of the Public Gambling Act by the trial Court, vide judgment dated 4.8.2016. However, the trial court while passing the order of disposal of the seized property, has ordered that the mobile sets and the amount of cash seized from the applicants be confiscated in favour of the State Government. Against the said order, the applicants filed an appeal under Section 454 of the Cr.P.C. before the Sessions Court, Dhamtari, which was dismissed on 7.10.2016 by the Additional Sessions Judge, Dhamtari and the order of the trial court regarding disposal of the property was maintained.

4. The grounds in this revision are, that the orders passed by the trial court and the lower appellate court are against the law and principles. The applicants have claimed, that the mobile sets and the amount of cash were seized from their possession and since the trial concluded in acquittal, they are entitled to get the seized property released in their favour. It is prayed that the order of the courts below be set aside and an appropriate order may be passed.

5. Learned counsel for the applicants submits that they never denied during the trial that the above-mentioned articles were seized from their possession and on examination under Section 313 of Cr.P.C. they claimed that the cash amount and the mobiles were taken forcefully by the policemen and they were falsely implicated in the case. Learned counsel further submits that since the trial concluded in acquittal of the applicants, the articles seized from their possession should be restored in their favour.

6. Learned State counsel has argued that although the trial has resulted in acquittal, the claim of the applicants is not substantiated by filing any document in proof and this was the reason that the trial court has ordered for confiscation of the seized articles which has been upheld by the lower appellate court.

7. Considering the material on record and the arguments submitted from both the sides the question which arises in this revision is, whether the order of confiscation of the seized articles is legally sustainable.

8. Before the trial Court, the Investigating Officer, Head-Constable, Prahlad Banchore (PW-6) has stated that the applicants were apprehended. From possession of applicant No.1 - Kailash @ Kailu and one Vivo mobile set and cash of Rs.34,500/- were recovered and seized vide Ex. P/2. Similarly, from possession of applicant No.2 - Manish Wadhwani, one Micromax mobile set, cash of Rs. 5,080/- and other articles were seized vide Ex. P/3. In cross-examination, it was suggested by the defence that the applicants were coming to home from their shop alongwith mobile sets and collection of cash and the said articles were forcefully taken by the policemen, which has been denied. The independent witnesses Rishabh Gupta (PW-1) and Vivek Soni (PW-2) have not supported the case of the prosecution and declared hostile. Head-Constable, Rakesh Mishra (PW-5) was present at the time of above-mentioned search and seizure. In cross-examination, a suggestion was given to him that the mobiles and cash amounts were forcefully taken from the applicants by the policemen, which has been denied. ASI, B.R. Sinha (PW-7) had lodged the FIR Ex. P/9, investigated the case and presented the charge-sheet in the court.

9. After going through evidence of the witnesses of the prosecution, it appears that the defence of the applicants is that mobile sets and cash amount which were in their possession, were forcefully taken by the policemen and they have been falsely implicated. Similar statement has been given by them under Section 313 of the Cr.P.C. Hence, it is clear that the applicants had never given up their claim on the seized mobile sets and the cash amount from their possession.

10. The normal rule is, when an accused is discharged or acquitted the court should restore the property to the person from whose custody it was taken and in case of conviction the seized property should be restored to the person entitled.

11. In **N. Madhavan v. State of Kerala** reported in **AIR 1979 SC 1829**, while interpreting Section 517 of the Code of Criminal Procedure, 1898 (Section 452 of the Present Code) the Apex Court has laid down:

'The words "may make such order as it thinks fit" in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt – as in

the instant case – that the property in question was seized from the custody of such accused and belonged to him.'

12. The applicants have placed reliance on judgment of this court in *Manharan vs. State of Chhattisgarh and Another*, Criminal Appeal No. 1181 of 2003 passed on 14.5.2014, in which while ordering disposal of the property, this court has followed **N. Madhavan vs. State of Kerala** (supra) and also followed the judgment of the Apex Court in **Pushkar Singh vs. State of Madhya Pradesh and another** reported in **AIR 1953 SC 508**.

13. Considering the facts and circumstances of the case and the principles laid down, it appears, that the order of the trial court under Section 452 of the Cr.P.C. and the judgment of the lower appellate court suffers from serious infirmity. Hence, limiting to the consideration of order under Section 452 of the Cr.P.C. this revision petition is allowed. The order passed by the learned trial court and the learned lower appellate court with respect to disposal of seized cash amount and mobile sets in the impugned judgments, are hereby set aside. The case is remanded back to the trial court for passing a fresh order under Section 452 of the Cr.P.C. for disposal of the seized property in the light of the aforementioned principles and the order of this court.

Sd/-

(Rajendra Chandra Singh Samant)
Judge