

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 744 of 2016

Kishan Lal Jangade, S/o. Shri G. Jangade, Aged About 72 Years, R/o. Vill. Parsada, P.S. Mandir Hasaud, Distt. -Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, through : The District Magistrate, Raipur Chhattisgarh.
2. Shyam Lal Jangade, S/o. Late Deokaran Jangade, aged about 65 years, R/o. Village Parsada, P.S. - Mandir Hasaud, District – Raipur (C.G.)

-----Respondents

For Petitioner	: Mr. Malay Kumar Bhaduri, Advocate
For Respondent No.1/State.	: Mr. Neeraj Sharma, Govt. Advocate
For Respondent No.2	: Mr. R.K. Tiwari & Mr. Ratan Pusty, Advocates

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

07/07/2017

Heard.

1. This petition has been filed under Section 482 of Cr.P.C. challenging the impugned order dated 15.06.2016, passed by the 9th Additional Sessions Judge, Raipur in Criminal Revision No.393/2015, upholding the order dated 29.06.2015, passed by the trial Court, in Criminal Case No.468/2011 for disposal of property seized in the case concerned.

2. Respondent No.2 lodged an FIR against the petitioner alleging that the petitioner trespassed the agricultural field of respondent No.2 and committed theft by harvesting crops raised on the field of the respondent. After investigation and filing of charge-sheet, the petitioner was charged under Section 447 and 379 of the Indian Penal Code. On completion of trial, the trial Court passed the judgment dated 29.06.2015 by which the petitioner was acquitted of the charges and only order with respect to the seized property made was this that interim custody as ordered by the Court in favour of Supurddar shall be released. Petitioner preferred a revision before the Sessions Court, Raipur, which has been decided by the impugned order in which the order passed by the trial Court for disposal of property under Section 452 of Cr.P.C. has been upheld. Hence this petition.
3. It is submitted by the counsel for the petitioner that during the investigation of the case concerned, the police seized 60 bags of the paddy from the petitioner/accused with a tractor trolley. During the course of trial, seized paddy was given to complainant on interim custody. While disposing of the case, the trial Court has not passed any order in respect of the entitlement of the seized paddy and the same has been confirmed by the order of the Sessions Court in criminal revision. It is also submitted that it is the requirement under Section 452 of Cr.P.C. for the Court to give a finding on the question of entitlement on the basis of claims made by the parties to a case at the time of final disposal of the criminal case. Hence a direction may be issued to the trial Court to pass a

proper order with respect to the entitlement of the seized property in the case.

4. Counsel for the respondent No.2 submits that seized paddy was ordered to be given in Supurdnama to respondent No.2 by the trial Court, which was never objected by the petitioner during the course of trial. Respondent No.2 has equal claim on the seized property as he has claimed the ownership on the disputed land from which the paddy crop was harvested at the time of incident and on the basis of his FIR, the petitioner was prosecuted. The order passed by the trial Court releasing the seized property from interim custody does not suffer from any infirmity.
5. Perused the judgment dated 29.06.2015, passed in Criminal Case No.468/2011, passed by Additional Chief Judicial Magistrate, Raipur in which it has been held that no opinion can be given that the disputed land was possessed and shown by the complainant-respondent No.2, which has been harvested by the petitioner and on the basis of this finding this petitioner was acquitted giving benefit of doubt. Clearly there is no order as to the entitlement of possession on the seized property/paddy.
6. Section 452 of Cr.P.C. envisages a duty on the Court to pass an order of disposal of the seized property and in case the property is to be delivered to any person then the Court has to consider the entitlement of possession for such property. The petitioner has placed his reliance on the judgment of *Balwant Singh, S/o. Ramnarayan Patidar & Anr. Vs. State of Madhya Pradesh & Ors*, reported in 1993 M.P.L.J. 306.

7. On behalf of the respondent No.2, reliance has been placed in the case law reported in *A.I.R. (36) 1949 Nagpur 17 (C.N. 11), Joharilal Debisahai Agarawal Vs. Emperor* and the judgment passed in case of *Kamarlal and another Vs. State of M.P. and Another*, reported in *1992 Cri.L.J., 3407*, wherein the guidelines for deciding the entitlement has been laid down.
8. On going through the documents on record, it appears that practically there is no decision on the question of entitlement. Respondent No.2 has put a claim and had initiated the criminal process by lodging FIR against the petitioner but the prosecution has ended up in acquittal of the petitioner/accused. Copy of the statement made by the petitioner/accused under Section 313 of Cr.P.C. is also placed on record in which he has made a claim that paddy seized from his possession belonged to him and was the crop from his own agricultural field. Hence there was necessity to give a clear decision on the question of entitlement and fulfill the requirement of Section 452 of Cr.P.C.
9. Considering these facts and circumstance and for the reasons aforementioned, this petition is allowed. The trial Court is directed to give an opportunity of hearing to the parties and pass an order under Section 452 of Cr.P.C. deciding the question of entitlement of the seized property in this case preferably within four months.
10. The parties are directed to remain present before the trial Court on 21.08.2017. In case any of the parties failed to appear before the trial Court, the Court may issue notice to secure their attendance.

11. With this direction and observations, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram