

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

911 CRIMINAL REVISION APPLICATION NO. 32 OF 2017

SANTOSHKUMAR S/O EKNATH KABRA

.. Applicant

VERSUS

THE STATE OF MAHARASHTRA
AND ANR

.. Respondents

...

Advocate for the Applicant : Shri Y.G. Somani
APP for the Respondent – State : Shri R.B. Bagul

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CORAM : P.R. BORA, J.

Dated: November 15, 2017

PER COURT :-

1. Heard Shri Somani, learned Counsel appearing for the applicant and Shri Bagul, learned APP appearing for the Respondent - State.

2. The present applicant along with present respondent no.2 was prosecuted in Regular Criminal Case No.127 of 2005 by Judicial Magistrate, First Class at Jafrabad, Dist. Jalna for the offences punishable under Sections 465, 467, 420, 406 r.w. 34 of the Indian Penal Code & under Sections 32, 32B & 33 of The Bombay Money-Lenders Act.

3. It was the case of the prosecution that, the informant - Ramdas Bajirao Pandit had obtained a loan of Rs.10,000/- from the applicant, for which, the applicant had charged the exorbitant interest at the rate of Rs.5% per month. It was the further allegation against the applicant that, he had obtained some blank cheques as well as a blank bond from the informant by way of security to the loan amount so advanced by him to the said informant. It was also the case of the prosecution that, though the informant time to time repaid a total amount of Rs.15,000/-, the applicant was still demanding some more amount from the informant stating that, the amount which was paid by the informant was credited towards the interest and the principal amount was still unpaid.

4. On such report being lodged by the informant, the crime was registered against the applicant and the investigation was set in motion. During the course of the investigation, search of the house of the applicant was taken by the police and about 31 articles were seized from the house of the applicant. The articles were containing the gold and silver ornaments and the cash amount. As is revealing from the record, weight of the 11 gold articles so seized was 281.600 gms and its value at the relevant time was shown as Rs.1,55,618/-,

whereas the weight of 17 silver articles was shown as 6154 gms and its value at the relevant time was shown as Rs.58,512/- and cash amount which was seized was of Rs.7,000/-.

5. In Regular Criminal Case No.127 of 2005 the prosecution examined only one witness i.e. the informant - Ramdas Bajirao Pandit. The discussion made in the said Judgment in R.C.C. No.127/2005 reveals that, the only witness examined in the said case also did not support the case of the prosecution and the learned APP thereafter closed the evidence of the prosecution. Since no incriminating evidence had come on record, obviously the statement of the applicant under Section 313 of the Code of Criminal Procedure was not recorded by the Magistrate. The learned Magistrate vide Judgment and order passed on 27.09.2013 acquitted the applicant along with the another accused namely Premsuks s/o Laxminarayan Kabra of all the offences charged against them. However, the learned Magistrate in the said Judgment gave a direction that, the valuable gold and silver ornaments be sent to Mint and cash amount be forfeited to the Government.

6. Aggrieved by, the order so passed by the learned Magistrate in regard to the disposal of the property produced in the

said case, the present applicant preferred an appeal before the Sessions Court at Jalna vide Criminal Appeal No.82 of 2013.

7. The learned Additional Sessions Judge -2, Jalna vide Judgment and order passed on 26.10.2016, however dismissed the said appeal. Hence, the applicant has preferred the present Criminal Revision Application challenging both the orders passed by the Courts below.

8. The learned Counsel appearing for the applicant submitted that, both the Courts have failed in appreciating that, the concerned Muddemal property was seized from the house of the applicant and was not claimed either by the informant or any other person during the course of the trial as well as in the appeal and as such, the said property must have been returned to the present applicant. The learned Counsel, therefore, prayed for setting aside the orders passed by the Courts below and consequently to direct the Trial Court to return the said property to the present applicant.

9. Shri Bagul, learned APP appearing for the respondent – State submitted that, though the informant did not support the case of the prosecution, in the cross-examination he admitted that, he has

entered into a compromise with accused and as such, he has not deposed against the accused persons. The learned APP submitted that, in such circumstances, though the offence alleged against the applicant could not be proved, the other documents which were on record more particularly stamp paper etc., were indicating that, the applicant is involved in the business of money lending. In the circumstances, according to the learned APP the Courts below have not committed any error in not returning the said property to the present applicant and directing its confiscation to the Government. The learned APP, therefore, prayed for rejecting the Criminal Revision Application.

10. I have carefully considered the submissions made by the learned Counsel appearing for the applicant and the learned APP. I have perused the Judgment passed by the learned Magistrate in Regular Criminal Case No.127 of 2005 and the Judgment passed by the learned Additional Sessions Judge – 2 in Criminal Appeal No.82 of 2013. Both the orders are apparently unsustainable and deserve to be quashed and set aside for the following reasons :

11. Section 452 of the Code of Criminal Procedure deals with the disposal of the property at conclusion of trial. It reads thus :

“452. Order for disposal of property at conclusion of trial.-(1)When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may

have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

12. Plain reading of the aforesaid Section makes it clear that, when after an enquiry or trial the accused is discharged or acquitted, the Court should normally restore the property, which is produced before it or which is in his custody to the person from whose custody it was taken. In the instant matter, there is no dispute that, the muddemal property produced in the case was seized during the course of investigation from the custody of the present applicant. It is further not in dispute that, the applicant got a clear acquittal in the aforesaid criminal case from the offences charged against him. As such, in view of the provisions under Section 452 of the Code of Criminal Procedure, the learned Magistrate ought to have returned the said property produced in the said case to the present applicant, from whose custody, the same was seized by the police. However, the learned Magistrate has directed the said Muddemal i.e. the gold and silver ornaments to be sent to the Mint and directed the cash amount to be forfeited to the Government.

13. The learned Magistrate has passed such an order observing that, no one has claimed the ownership over the said

property, whereas the learned Additional Sessions Judge has dismissed the appeal filed by the present applicant by observing that, the acquittal of the applicant by the trial Court extending the applicant the benefit of doubt is not sufficient to return the valuable and cash property to him. The observations made and the finding recorded by both the Courts are apparently unsustainable.

14. From the record, it is quite clear that, during the course of trial before the Judicial Magistrate, First Class Court, no incriminating evidence came on record against the applicant and he was, therefore, acquitted by the said Court. During the course of the trial before the Magistrate, admittedly no one came forward to claim the property seized in the said matter from the house of the present applicant. As I noted above, the informant also did not claim any of the property seized from the custody of the applicant. As is revealing from the material on record, nothing has come on record to show that, the applicant was involved in the affairs of money lending. Admittedly, the State has not filed any appeal against the Judgment and order passed in R.C.C. No.127 of 2005. In such circumstances, it is really surprising that, the learned Additional Sessions Judge in the impugned order has held that, the documents on record of the trial Court *prima facie* show that, the appellant i.e. present applicant and

present respondent no.2 were indulged in illegal money lending. In absence of any such case made out by the prosecution, the finding so recorded by the learned Additional Sessions Judge is liable to be set aside at the threshold. The further observation made by the learned Additional Sessions Judge that, the appellant was bound to prove his title to the said property is also wholly erroneous. In view of the fact that, the concerned muddemal property was seized from the custody of the applicant and the same was not claimed by anyone including the informant during the course of the trial before the Court of Magistrate as well as during pendency of the appeal before the Sessions Court, the trial Court must have returned the said property to the applicant after he was acquitted of the offences charged against him. For the reasons stated above, the orders passed by the Courts below deserve to be set aside and quashed and the Criminal Revision Application deserve to be allowed. Hence the following order.

ORDER

- i) The learned Judicial Magistrate, First Class at Jafrabad is directed to return the Muddemal property i.e. gold and silver ornaments as well as the cash amount as described in the seizure panchanama carried out on 24.04.2005 and produced in Regular

Criminal Case No.127 of 2005 to the present applicant namely Santoshkumar Eknath Kabra.

. The Criminal Revision Application thus stands allowed.

(PR. BORA, J.)

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