

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

CRIMINAL APPEAL NO. 155 OF 2003

Nanasaheb S/o Ramnath Nirmal,
Age : 30 years, Occu. Service,
R/o. Nirmal Pimpri, Tq. Rahata,
Dist. Ahmednagar. ... Appellant

VERSUS

The State of Maharashtra ... Respondent

.....
Mr Uday S. Malte, Advocate for the appellant
Mr S. J. Salgare, APP for respondent/State
.....

**CORAM : T. V. NALAWADE &
A. M. DHAVALA, JJ.**

DATE : 09.11.2017.

ORAL JUDGMENT (PER A.M. DHAVALA, J.) :

. This is an appeal by the original informant challenging the order of crediting money seized to the Government. The appeal is filed u/s 454 of the Cr.P.C.

2. In Sessions Case No. 18/2000, eight accused persons were charged for committing dacoity and robbing PW1 Nanasaheb Nirmal/the appellant of cash of Rs. 27,468/- + 450/- and other articles namely diary, bills, receipt books of the informant.

3. During the investigation, the accused were arrested. The following amounts were seized from them.

Sr. No.	Accused No. & Name	Amount seized in rupees
[1]	Accused No. 1 – Mallu	1570/- + diary with photographs of the informant (Panchanama Exh. 80).
[2]	Accused No. 2 - Popat	Cash of Rs. 4650/- (Panchanama Exh.99)
[3]	Accused No. 3 – Sanjay	Cash of Rs.4050/- (Panchanama Exh. 83).
[4]	Accused No. 4 - Rajendra	Cash of Rs.2450/- (Panchanama Exh103).
[5]	Accused No. 5 - Sattar	Cash of Rs. 3000/- (Panchanama Exh102)
[6]	Accused No. 6 – Kiran	--
[7]	Accused No. 7 - Sameer	3200/-
[8]	Accused No. 8 - Baba	3200/-
	Total	Rs. 22,120/-

4. The prosecution led evidence and PW1 Nanasaheb, who has deposed that on 27.06.2000 at about 05:00 a.m. while he was returning by his Tempo from Kopargaon to Sangamner, at Sahakar Nagar his tempo was halted and he was assaulted by four persons and threatened to be killed. Then they drove the Tempo upto Pultamba diversion. They robbed the informant of Rs. 27,468/- and cash of Rs. 450/- from his own pocket. One diary and bills were also taken away with the cash. He identified the diary and bills and receipts recovered along with the cash. Since the cash was not having any identification marks, it could not be identified. The ld. Addl. Sessions Judge, Kopargaon acquitted the accused on the

ground of absence of identification parade. For want of identification of the cash, he directed that the cash be forfeited to the State.

5. It is relevant here to record that, all the accused have denied the seizure of cash from them and thus they have not claimed the cash. This order of forfeiture of cash is under challenge.

6. Learned advocate Mr U. S. Malte for the appellant argued that, when the accused were not claiming the cash, it should have been given to the informant.

7. Learned APP Mr Salgare argued that, the cash was not identified as stolen property and, therefore, it was forfeited to the State.

8. When the accused have disclaimed the money, the seized cash should have been handed over to the informant who was claiming the money. The forfeiture of the property to the State was wholly unjustified and unwanted.

9. In this regard, we rely on **Mahesh Kumar Vs State of Rajasthan 1991 SC (Cri) 219** wherein, in the similar facts and

circumstances it is observed thus:

“In the facts and circumstances of the case, we are satisfied that the direction made by the learned Single Judge of the Rajasthan High Court for the forfeiture of the amount of Rs. 20,000/- (Rupees twenty thousand) to the State is wholly unwarranted. It is now accepted principle that the confessional part of the statement made by the accused leading to discovery within the meaning of Section 27 of the Evidence Act, 1872 or Section 162 of the Code of Criminal Procedure, 1973 can be made use of for the purpose of and the disposal of the property under Section 452 of the Code. The High Court as well as the courts below found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt. The accused disclaimed the stolen property and there is no reason why same should not be returned to the owner-the complainant, to which it belongs”.

8. Thus, the appeal deserves to be allowed. Hence, the order.

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The order of ld. Additional Sessions Judge, Kopergaon in Sessions Case No. 18/2000 decided on 04.01.2003 to the extent of forfeiture of cash amount to the State is set aside. It is ordered that,

the cash of Rs. 22,120/- seized shall be delivered to the informant subject to furnishing Indemnity Bond to the satisfaction of the trial Judge. There shall be no order as to costs.

[A. M. DHAVALE]
JUDGE

[T. V. NALAWADE]
JUDGE

sgp