IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THURSDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVENTEEN

P R E S E N T
HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE PETITION NO. 112 OF 2005

Between:

The IV-Additional District &
Sessions Judge [FTC]
Nizamabad. … Referring Officer

AND

Sarda Ramanarayana
[died] per LRs.] … Petitioners

V/s.

The State, through Public Prosecutor,
Nizamabad. … Respondent

Referring Officer : IV-Additional District & Sessions Judge
Nizamabad

Counsel for the Respondent : Public Prosecutor

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 112 OF 2017

O R D E R :

This reference is made under section 395 [2] of Cr.P.C. by the IV-Additional District and Sessions Judge, Nizamabad, vide order dated 23/2/2004 passed in Crl.RP.No. 21 of 2002, requesting this Court to clarify "whether the Court can order confiscation of the cash, which is produced before the Court in connection with Crl.RP.No. 21 of 2002 in CC.No. 43 of 2002 on the file of the Court of Judicial Magistrate of First Class, Special Mobile, Nizamabad, seized during investigation by the Investigating Agency which is lying in deposit but the case was abated due to death of the accused. In such a case, "whether the Court can order confiscation of the property and if no property to be ordered to be returned to the legal representatives in the absence of rival claimants.

2. According to section 452 of Cr.P.C., 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 other wise, 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. Section 452 of Cr.P.C. deals with the order of disposal of property at conclusion of trial. But in the present case, no trial or enquiry was concluded and no order for disposal of the property would arise. In the present case, the accused was charge-sheeted for various offences and the property was seized from the possession of accused, who died subsequently and a case against him was abated, where there is no enquiry or trial, section 452 of Cr.P.C. does not apply and the Court can pass order under section 452 of Cr.P.C. for disposal of the property. In the absence of any trial or enquiry the Court is under obligation to exercise powers under section 452 of Cr.P.C., since it is the property recovered from the possession of the accused in connection with the crime during the course of investigation.

3. In normal circumstances on acquittal or discharge, the property should be returned to the person from whose custody it was seized. But, when there are circumstances showing that the accused has not claimed the

property as his specifically and when there are also no grounds to hold that the property could belong to him and the question of ownership has not been gone into in the judgment and decided one way or the other and the discharge or acquittal is based upon inadequacy and doubtfulness of proof offered, the property should not be returned to the accused and the court has certainly got a discretion to return the property to the complainant. Where the court finds it difficult to come to a definite finding, the property should be returned to the person from whose possession it was seized, as held in HARIHAR SINGH v. NAIKANTH SIGH[1].

4. In the present facts of the case, no trial or enquiry was held, thereby there was no obligation on the part of the court to pass an order under Section 452 Cr.P.C. since conducting of enquiry or trial is a condition precedent to exercise power under Section 452 Cr.P.C.

5. Property or document regarding which an offence appears to have been committed or which has been used for commission of an offence should not be returned to the convict. Where there is a 'doubt as to ownership' of property or where a 'question of bona fide title by purchase or otherwise arises' the duty of the criminal court is to leave the parties to their remedy in a

[1] 1957 Crl.L.J.1442

civil court. In the meanwhile the criminal court may adopt any of the following modes of disposal:

i) It may return the property to the person from whom it was seized and leave the dis-satisfied party to his remedy in a civil court;
ii) It may keep the property in its custody pending the decision of a competent civil court;
iii) In such cases where property is claimed by a person other than the person from whom it was taken, the court may impose conditions on the person to whom it is delivered in order that the property or the value thereof may be forthcoming in case the rival claimants establish a title to it.
iv) It may where the property is subject to speedy and natural decay, order it to be sold and proceeds retained in the custody of the court until a right to it is established by civil court. Where the court finds that the property in respect of which offence has been committed partly belongs to the complainant and partly to the accused who has been discharged it may deliver the property to both on the execution of joint receipt by them.

6. In the present facts of the case, no trial or enquiry was concluded but the matter was settled before Lok Adalat due to composition between the complainant and petitioner. In such a case, the magistrate or Sessions Judge are not bound to pass an order under Section 452 (1) Cr.P.C.

7. Learned counsel for the petitioner would draw the attention of this court to the judgment of Apex Court in **N. MADHAVAN v. STATE OF KERALA**[2] wherein it was held that when trial or enquiry is concluded, the property is bound to be returned to the person from whom it was seized if he is found not guilty. There is no dispute with regard to the law declared by the Apex court. But, in the absence of any conclusion of any trial or enquiry, the

[2] AIR 1979 SC 1829

courts are not bound to pass an order under Section 452 Cr.P.C. In such a case, the option open to the court is to return the property to the police for return in view of the law declared by the Apex Court in **PUHKAR SINGH v. STATE OF MADHYA BHARAT**[3].

8. In view of law declared by the courts referred supra, when no inquiry or trial is concluded, the Magistrate has to return the property to the Police, who produced before the Court for disposal in accordance with law. Persuaded by the judgment of **Madhya Bharat** (3rd supra), I deem it appropriate that however there is no rival claim before the Court the parties may be directed to approach the Civil Court claiming the rights of the property but when the case was closed due to abatement the Court may order confiscation to the State if the property is the subject matter of the offence.

9. Accordingly, the criminal revision case is disposed of.

10. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

14/09/2017
I s L

[3] AIR 1953 SC 508

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 112 OF 2005
(DISPOSED OF)

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