

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1142 of 2017

Ashok Kumar Patel, S/o Shri Vasudev Patel, aged about 26 years, R/o Village Vikram Pali, Police Station Sariya, District Raigarh, Chhattisgarh, present address: Opposite to Chhattisgarh Nagar Public School, House of Gupta, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh

---- Applicant

versus

1. State of Chhattisgarh through Station House Officer, Police Station Tikrapara, Raipur, District Raipur, Chhattisgarh
2. Suryakant Bagh, S/o Chandulal Bagh, R/o Dumartarai, Behind Kali Mandir, Mana Camp, Raipur, Chhattisgarh

--- Respondents

For Applicant	:	Smt. Fouzia Mirza, Advocate
For Respondent No.1/State	:	Shri U.K.S. Chandel, Panel Lawyer
For Respondent No.2	:	None

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

26.9.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the judgment dated 3.10.2017 passed by the Additional Sessions Judge (Special Court for trial of C.B.I. Cases), Raipur in Criminal Appeal No.185 of 2017, whereby the Additional Sessions Judge has upheld the order dated 27.5.2017 passed by the Judicial Magistrate First Class, Raipur in Criminal Case No.4777 of 2010 rejecting the application filed by the Applicant under Section 452 of the Cr.P.C. for getting possession of the seized amount of Rs.2.79 Lakhs.
3. Facts of the case, in brief, are that a charge-sheet for offence

punishable under Section 380 of the IPC was filed against the Applicant before the Judicial Magistrate First Class, Raipur, wherein it was alleged that on 13.10.2010 at about 10:00 p.m., the Applicant took out ATM Card of Complainant Suryakant from his pant and by using the said ATM Card he committed theft of Rs.2.79 Lakhs. After Trial, the Judicial Magistrate First Class, Raipur, vide judgment dated 28.3.2017 passed in Criminal Case No.4777 of 2010, acquitted the Applicant of the charge framed under Section 380 of the IPC, but ordered to confiscate the amount of Rs.2.79 Lakhs seized from him on the ground that the said amount has not been claimed by him. Thereafter, the Applicant moved an application under Section 452 of the Cr.P.C. before the Judicial Magistrate First Class for getting the said amount, but the application was rejected by the Judicial Magistrate First Class vide order dated 27.5.2017. Against the said order of rejection, Criminal Appeal No.185 of 2017 was preferred. Vide the impugned judgment dated 3.10.2017, the Additional Sessions Judge has affirmed the order of the Judicial Magistrate First Class. Hence, this revision.

4. Learned Counsel appearing for the Applicant submits that the said amount of Rs.2.79 Lakhs was admittedly seized from the possession of the present Applicant. Since it has not been proved that the said amount was of Complainant Suryakant and accordingly the Applicant has been acquitted of the charge framed against him under Section 380 of the IPC, the Applicant deserves to get the said amount of Rs.2.79 Lakhs.
5. Learned Counsel appearing for the State/Respondent No.1

opposes the submission made by Learned Counsel for the Applicant and supports the orders of the Courts below. However, he submits that an appeal against the order of acquittal of the Applicant has been filed.

6. I have heard Learned Counsel appearing for the parties and perused the record with due care.
7. It is not in dispute that the amount of Rs.2.79 Lakhs was seized from the possession of the Applicant. It is also not in dispute that after trial the Applicant has been acquitted of the charge framed against him under Section 380 of the IPC. From perusal of the record, it is also clear that before the Trial Court, no such evidence was led on the basis of which it could be established that the said amount of Rs.2.79 Lakhs was withdrawn by the Applicant from the bank account of the Complainant either through withdrawal form/slip or by using his ATM Card. Thus, the said amount of Rs.2.79 Lakhs was stolen property has not been proved by the prosecution. Since the amount was seized from the possession of the Applicant and there is no other claimant for the said amount and the Applicant has already been acquitted of the charge under Section 380 of the IPC and it has not been established that the said amount was a stolen property, the Applicant is entitled to receive the said amount of Rs.2.79 Lakhs.
8. Accordingly, the revision is allowed. The judgment dated 3.10.2017 passed by the Additional Sessions Judge and the order dated 27.5.2017 passed by the Judicial Magistrate First Class are set aside. The Trial Court/Judicial Magistrate First Class, after obtaining an adequate bond and/or a security from the Applicant as

contained in Section 452 of the Cr.P.C., shall refund him the aforesaid amount of Rs.2.79 Lakhs within one month from the date of receipt of this order.

9. Both the Courts below be sent a copy of this order forthwith for information and necessary compliance. Record of the Court below be also sent back.

Sd/-

(Arvind Singh Chandel)
JUDGE