

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 478 of 2017**

1. Arun Kumar Swarnkar S/o Shri Sadharam Swarnkar, aged about 51 years, R/o Village Baramkela, PS & Tahsil Baramkela, District Raigarh, C G

---- Appellant**Versus**

1. State of Chhattisgarh through District Magistrate, Raigarh, District Raigarh, CG
2. Sanjay Pradhan @ Singbabu @ Santosh Jena S/o Pitambar @ Duryodhan Jena, aged about 50 years, R/o Village Rehdakhol, District Sambulpur (Orissa) at present Cement Nagar Colony, Bargarh, PS & District Bargarh (Orissa)
3. Mahesh Bagrathi @ Doctor S/o Mana Bagrati, aged about 24 years, R/o Village Ghunghutipali, PS Dongaripali, District Sonpur, at present Aikamber Chauk, Vijaypur Road, Bargarh, District Bargarh, (Orissa)
4. Navin Thakur @ Thakur S/o Akhilesh Thakur, aged about 38 years, R/o Village Andi, PS Dongargarh, District Rajnandgaon, at present Hirakund First Camp Colony, Hirakund, District Sambalpur (Orissa)
5. Muna Sahu @ Pilate S/o Nilmani Sahu, aged about 22 years, R/o Village Kantapali, PS & District Bargarh (Orissa)
6. Satish Kumar Sahu @ Raki @ Raja S/o Shravan Kumar Sahu, aged about 21 years, R/o Village Kantapali, PS & District Bargarh (Orissa)
7. Vikaschand Rai @ Vikki @ Deepak S/o Nityanand Rai, aged about 23 years, R/o Village Kishanpuri Near Hanuman Mandir, Bhathali, PS Bhathali, District Bargarh (Orissa)
8. Ritesh Sahu S/o Keshavchand Sahu, aged about 25 years, R/o Village Baramkela, PS Baramkela, District Raigarh, CG.
9. Amitdas @ Gurudewa Munda S/o Rangnath, aged about 30 years, R/o Village Duduwasira, PS Town Balangir District Balangir (Orissa)
10. Kunal @ Manoranjan Barad @ Bullu @ Munu S/o Harishchandra Barad, aged 22 years, R/o BTM Colony,

OP BIM Colony, Jharsugda -Orissa - **Absconding**

11. Dilip Malik @ Patel S/o Nirmal Malik, aged 40 years, R/o Kantapali, PS - District Bargarh, Orissa - **Absconding**

---- Respondents

For Appellant :	Shri Anurag Dayal Shrivastava, Advocate
For Respondent/State:	Shri Vivek Sharma, GA

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

Order On Board by Pritinker Diwaker, J

02/02/2018

The appellant is the proprietor of Ruchi Jewelers situated at Baramkela, District Raigarh where according to the report lodged by him dacoity of ornaments worth 40-50 Lakhs apart from some cash, was committed on 18.02.2012.

2. As informed, during trial the appellant had filed an application under Section 451 of the Code of Criminal Procedure (for short "Code") before the Court below for interim custody of the ornaments subjected to dacoity, which however came to be rejected by it. Said rejection order was assailed by the appellant before this Court but during pendency of Cr.M.P No. 1140/2014, final judgment was passed and therefore on 2.8.2016 the said petition (Cr.M.P No. 1140/2014) was dismissed as withdrawn reserving liberty to the appellant to pursue his application before the trial Court. Application filed by the appellant before the trial Court under Section 452 of the Code was withdrawn on 16.2.2017 as

by that time the final judgment was already passed by the Sessions Judge on 30.9.2014 and in paragraph No. 126 of the said judgment a finding has been recorded by the trial Court that order in respect of disposal of the seized property can only be passed after the judgment in respect of the absconding accused is passed. It is this finding which has been assailed by the appellant before this Court.

3. Counsel for the appellant submits that he is a businessman in whose shop dacoity was committed and the ornaments worth Rs. 40-50 Lakhs have been seized and therefore he is entitled to receive the custody of those ornaments. He further submits that as the case of appellant has not been considered on merit including ownership and possession of the ornaments, trial Court may be directed to consider afresh the application to be filed by the appellant under Section 452 of the Code for releasing the property in question in his favour ignoring the finding recorded by the Court below in paragraph No. 126 of the judgment dated 30.9.2014. He further submits that the appellant cannot be made to wait for an indefinite period to get his own property because if the absconding accused persons are not arrested, he would unnecessarily be prohibited from receiving his property.

4. State counsel submits that he has no objection if the matter is remanded to the trial Court and the appellant is permitted to file a fresh application for releasing his property.

He further submits that the trial Court may be directed to go through the entire record, ascertain as to which property was subjected to dacoity and which property has been seized and then considering the entitlement of the appellant, it may be directed to decide the said application.

5. Thus considering the facts and circumstances of the case in particular the fact that by another order we have also decided the appeals preferred by the accused persons, finding recorded by the Court below in paragraph No. 126 of its judgement is set aside. Appellant is permitted to file a fresh application under Section 452 of the Code of Criminal Procedure for disposal of the property subjected to dacoity. Needless to say that in the event of filing any application by the appellant herein, the trial Court will decide the same as early as possible after considering all aspects of the case, in accordance with law.

6. With the aforesaid observation and direction, the appeal is disposed of.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Sanjay Agrawal)
Judge