

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2985 OF 2018**

|                               |                |
|-------------------------------|----------------|
| Rajguru Enterprise Pvt. Ltd., | ... Petitioner |
| Vs.                           |                |
| The State of Maharashtra      | ... Respondent |

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Mr. Shreeram Shirsat I/by Mr. Harsh Parte for the Petitioner.  
Mr. A.R.Patil, APP for the Respondent-State.

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**CORAM : PRAKASH D. NAIK, J.**  
**DATE : 18<sup>th</sup> JULY, 2018.**

**P.C.**

1. The petitioner is aggrieved by the order dated 15<sup>th</sup> February, 2018 passed by Adhoc Additional Sessions Judge-1, Raigad-Alibaug rejecting the Criminal Revision Application No. 72 of 2017 and confirming the order dated 13<sup>th</sup> June, 2017 passed by learned Judicial Magistrate First Class, Panvel.

2. It is the case of the prosecution that the petitioner-company M/s Rajguru Enterprise Pvt. Ltd., is into the business of manufacturing steel utensils and exporting the same abroad for last 16 years and the company has about 200 employees working in it for carrying out day to day business of the company. For carrying day to day business of the Company there is

approximately Rs.85,000/- cash kept in hand for its smooth functioning. It is the case of the complainant that first informant was introduced to one Mr. Akhtar Sayyad through Mr. Diljan Wadia. Akhtar Sayyed further introduced informant to his brother Anwar. On 8<sup>th</sup> November, 2016, demonetization for the Indian currency notes of Rs.500/- and Rs.1000/- was declared and it was also declared that all old the notes could be deposited in the bank account till 31<sup>st</sup> December, 2016. However, only a limited amount could be withdrawn from the banks. On 9<sup>th</sup> November, 2016 Mr. Anwar called the first informant and informed him that he had a party who could help in exchange of old/demonetised currency notes of Rs.500/- and Rs.1000/- with the new currency. Mr. Anwar constantly kept calling the informant on 10<sup>th</sup> November 2016 as well as 11<sup>th</sup> November 2016 asking him to get the currency notes exchanged. The company had a cash of Rs.85,00,000/- with them. On 11<sup>th</sup> November, 2016 Mr. Anwar telephoned complainant that Rs.50,00,000/- of the demonetized notes could be exchanged and asked the first informant to reach New Panvel Sector 10 near CIDCO with the said amount. Complainant alongwith his friends left for New Panvel by car. When they reached the place, Mr. Anwar came alongwith an

unknown person near the car of complainant. Mr. Anwar asked the complainant to show the demonetised notes to unknown person. They were shown Rs.3,50,000/-. Mr. Anwar than called someone. Four unknown persons came in a car and represented that one of them is from Police Department. Unknown person introduced by Anwar also joined them. The complainant and his friends were assaulted snatched the bag with money and fled away. FIR was lodged under Section 395 of Indian Penal Code.

3. During course of investigation cash was seized. The petitioner-complainant preferred an application before the trial Court for return of the said amount. Trial Court by order dated 13<sup>th</sup> June, 2017 rejected the said application. Thereafter, the applicant preferred revision-application before the Sessions Court which was rejected 15<sup>th</sup> February, 2018. In the Sessions Court, prosecution had given no objection for returning of the amount of Rs.12,67,500/- seized by police to the petitioner-complainant. One of the accused filed say stating that the said incident has not occurred and there was no recovery from him. The Sessions Court had observed that the applicant had failed to prove that he is the owner of the seized amount, therefore, he was not entitled to Rs.12,67,500/- which was recovered by the police during the

course of investigation.

4. The petitioner-complainant had placed reliance upon the Bank Statement to show that extent and volume of business of petitioner company. It is submitted that, the accused did not make an application for return of cash. The property belongs to petitioner company. The petitioner has maintained proper accounts in which cash in hand was shown. It is submitted that the petitioner has in its books of account have shown the amount of Rs.46,50,000/- as loss of theft on 11<sup>th</sup> November, 2016. Outstanding payment of witness which were due for a long time were cleared immediately upon receipt of amount in question and the same is stated by witnesses to be part of amount which is total amount of robbery.

5. The application dated 22<sup>nd</sup> December, 2017 was preferred by investigating agency for depositing the amount seized during investigation which was allowed. The amount is deposited according to petitioner in account of Sr. Police Inspector of Khandeshwar Police Station at State Bank of India, Panvel.

6. Considering the aforesaid submission, the application for return of amount can be allowed. Hence, I pass the following order.

**ORDER**

- (i) Writ Petition is allowed;
- (ii) The impugned order dated 13<sup>th</sup> June, 2017 passed by Judicial Magistrate First Class, Panvel and order dated 15<sup>th</sup> February, 2018 passed by Adhoc Additional Sessions Judge-1, Raigad-Alibaug are set aside.
- (iii) The amount of Rs.12,67,500/- in the account bearing No. 33486237410 of Sr. Police Inspector, Khandeshwar Police Station at State Bank of Indian, Panvel be returned to the petitioner-complainant seized in Crime No.226 of 2016 registered with Khandeshwar Police Station;
- (iv) The petitioner-complainant shall file an undertaking before the trial Court that the Petitioner/complainant would return the aforesaid amount as and when directed by trial Court;
- (v) The petitioner-complainant shall file aforesaid undertaking within four weeks from today;
- (vi) Writ Petition stands disposed off.

Sachidanand  
Kuttan Nair

Digitally signed  
by Sachidanand  
Kuttan Nair  
Date:  
2018.07.25  
14:10:15 +0530

**( PRAKASH D. NAIK, J. )**