

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2173 of 2018

Arising Out of PS. Case No.-113 Year-1998 Thana- BHAGWANPUR District- Begusarai

Tribhuwan Jha, S/o Ram Charitra Jha, R/o Vill.- Sanjat Ward No.9, P.S.-
Bhagwanpur, District- Begusarai.

... .. Appellant/s

Versus

1. State of Bihar
2. Kailash Sah, S/o Late Shree Narayan Sah, Resident of Teghra Bazar, P.S.-
Teghra, District- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Shashi Dhar Jha-Advocate
For the Respondents	:	Mr. Gautam Kejriwal-Advocate
		Mr. Atal Bihari Pandey-Advocate
		Mr. Alok Kumar Jha-Advocate
For the Respondent/s	:	Mr. Zeyaul Hoda-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

9 31-01-2019 This appeal has been filed under Section 454 of the

Cr.P.C. against an order dated 24.02.2018 passed by the

Additional Sessions Judge, Fast Track Court No.1, Begusarai in

Sessions Trial No.439 of 1999 arising out of Bhagwanpur P. S.

Case No.113 of 1998 purported to be under Section 452 Cr.P.C.

2. Before coming to the main issue, it looks
desirable to elaborate the salient feature so persisting on the
record. There was commission of dacoity in the house of
Tribhuwan Jha, appellant/ informant in the night of 20.08.1998,
wherein dacoits 20-25 in number, armed variously, raided his
house and looted away their belongings, ornaments, utensils,
cash appertaining to Rs.27,500/- etc. Furthermore, there also



happens to be disclosure over identification against Surendra Sahni, Dilip Paswan, Shankar Paswan, Ranvir Paswan, SakhiChand Sahni and others. It is further evident that during course of investigation, Surendra Sahni was apprehended, who was interrogated and during course thereof, he made inculpatory extra-judicial confessional statement including revelation at his end that the looted ornaments have been sold to Kailash Sah (O.P. No.2), a Goldsmith, having his shop at Teghra Bazar. It is also evident that during course of search, some article was recovered from the house of aforesaid Surendra Sahni. Shop of Kailash Sah (O.P. No.2) was also searched and during course thereof, the looted ornaments were recovered and for that, seizure list was prepared. After concluding investigation, chargesheet was submitted whereupon trial commenced. During course of trial, so far O.P. No.2 is concerned, he was proceeded for an offence punishable under Section 412 of the I.P.C. whereunder he was convicted by the learned lower Court. However, the convicts including Kailash Sah preferred different Cr. Appeal (S.J.) No.737 of 2004, Cr. Appeal (S.J.) No.806 of 2004, Cr. Appeal (S.J.) No.807 of 2004, which were heard conjointly and vide judgment dated 23.04.2009, the same was allowed. So far appellant Kailash Sah (Cr. Appeal (S.J.) No.737



of 2004) is concerned, his case has been dealt with from Page No.10 to 13 of the judgment and the concluding Para speaks like in following way:-

“Considering the manner in which the search was conducted, it is doubtful that the items seized and items stolen were one and the same. Most of all even if it is accepted that the allegations are true, there is no evidence to establish that Kailash Sah had knowledge that the items allegedly sold him, were stolen property. I find that the prosecution has not been able to prove the charges leveled against this appellant.”

3. It is further evident that before commencement of trial, appellant/ informant prayed for release of the sold ornaments, which was allowed by the C.J.M. and on the basis thereof, he is in possession thereof.

4. After having the respective appeals allowed, the O.P. No.2 has prayed before the lower Court to direct the informant/ appellant to return the property, whereupon, informant/ appellant was noticed, who failed at an earliest to respond, whereupon warrant of arrest non-bailable has been issued against him that led his appearance with a prayer that he is ready to pay the price equivalent to market rate, whereupon execution of warrant of arrest non-bailable was stayed, matter has been heard and then, by the order impugned, the informant/



appellant has been directed to either handover the ornaments to Kailash Sah (O.P. No.2) or to pay the price as per market rate to Kailash Sah (O.P. No.2), side by side, vacated the stay of execution of warrant of arrest non-bailable, hence this appeal.

5. Learned counsel for the appellant/ informant has submitted that order impugned is bad, because of the fact that it depicts non-application of judicial mind. Furthermore, it has also been submitted that occurrence has not been doubted that means to say, there was commission of dacoity in the house of the appellant wherein the dacoits have looted away their belongings including ornaments, utensils, cash etc. It is also out of question that on an inculpatory extra-judicial confessional statement of a co-accused divulging the fact that looted ornaments have been sold to Kailash Sah, his shop was searched wherefrom looted ornaments were recovered and for that, seizure list was prepared, which was identified during course of T. I. Parade. Subsequently thereof, on a petition filed by the appellant, aforesaid ornaments were released to the appellant/ informant. Furthermore, it has been submitted that acquittal or conviction is one circumstance while right to possess is another circumstance. Both have got independent identity commanding independent sphere. However, in some cases where commission



of an occurrence is being doubted, then in that circumstance, it will have some adverse impact, otherwise mere acquittal of an accused will not give any cogent ground to the accused to ask for return of the property having recovered from him. In order to justify his plea, learned counsel also referred ***Prakash Chandra Jain v. Jagdish and another reported A.I.R. 1958 Madhya Pradesh 270.***

6. The learned counsel for the Respondent No.2 has submitted that the order impugned passed by the learned lower Court is just, legal and proper in the background of the fact that the learned lower Court has properly considered the relevant provisions of law in its desirability. In order to justify the same, the learned counsel has argued that there happens to be no dispute with regard to recovery of ornaments from the shop of Respondent No.2, as per seizure list. It is also admitted that those ornaments were returned to the appellant/ informant in accordance with ***Section 457 of the Cr.P.C.***, which is found enforceable till the conclusion of the trial. As soon as trial concluded in finality including that of appeal, the Court has to pass order on that very score, in accordance with ***Section 452 of the Cr.P.C.*** It has also been urged that the order under ***Section 457 of the Cr.P.C.*** always happens to be conditional one, on



account thereof, there is an offer having at the end of the appellant that he is ready to pay the money equivalent to market value of the ornaments having received by him, has rightly been acknowledged by the lower Court. In an alternative, it has also been directed to handover the seized ornaments. In support thereof, also relied upon *N. Madhavan v. State of Kerala reported in 1979 CRI.L.J. 1197*, *V. Parakashan v. K. P. Pankajakshan and another reported in 1985 CRI.L.J. 951*.

7. Furthermore, the question has also been raised over maintainability of instant appeal. On this very score, it has been pleaded that from Annexure-2, order dated 9.4.2015, the order for release of ornament was already been passed, though directing the Malkhana Incharge to return back the same, which subsequently been traced out to be released in favour of appellant/ informant, whereupon, noticed and by the order impugned, the same has been directed to be returned to the appellant. So, the order dated 9.4.2015 is the main order against which an appeal would have been filed and not against the order impugned. Hence, the appeal is time barred.

8. It is evident that during the intervening period, while the matter was pending before the C.J.M. the seized ornaments, which were recovered from the shop of Kailash Sah



were released in favour of informant/appellant vide order dated 06.10.1998. After having the respective appeals allowed, Opposite Party No.2, Kailash Sah filed petition on 28.08.2009, praying therein to hand over the ornaments having seized from his shop and the same was allowed vide order dated 09.04.2015, directing the Malkhana I/c to return back the same. After being informed that the ornaments have already been released in favour of informant, whereupon, the learned Court below noticed the informant, who firstly averted the same. Then the learned Court below was compelled to issue warrant of arrest non-bailable, whereupon appellant/ informant appeared before the learned lower Court on 03.04.2017 and filed petition to recall/ stay the execution of warrant of arrest and for that, shown his readiness that he is ready to pay the amount in proportionate to the market value of the ornaments. On that very score, after staying the execution of the warrant, the learned Court below directed to serve a copy of the petition upon the learned counsel for the O.P. No.2 and fixed a date for hearing and after hearing, by the order impugned, passed the order to the effect either to return the seized ornaments to Kailash Sah or to deposit the price of ornaments as per prevailing market value to Kailash Sah. Simultaneously, stay of execution of warrant of arrest non-



bailable has been vacated. So, it is the order impugned which caused prejudice to the appellant/ informant being an appealable order, hence instant appeal is maintainable as per ***Section 454 of the Cr.P.C.***

9. ***Chapter-XXXIV of the Cr.P.C.*** commencing from ***Section 451*** to ***Section 459*** deals with disposal of property commanding the stage of the proceeding and ***Section 452 Cr.P.C.*** is specific regarding disposal of the property after conclusion of the trial. For better appreciation, the same is quoted below:-

“452. Order for disposal of property at conclusion of trial.

(1) 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 entitle to possession thereof or otherwise, 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.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond,



with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under sub- section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term" property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

10. From plain reading of **Section 452 Cr.P.C.**, it is evident that the jurisdiction of the Court in consonance with the



custody of the property has been properly identified under four contingent that means to say, produced before the Court or in its custody or regarding which any offence is committed or which is used in the commission of any offence.

The Section speaks four ways of disposal that means to say, by means of *a) Destruction, b) Confiscation, c) Delivery to a person entitled to its possession or d) otherwise.*

8. Because of the fact that application of ***Section 452 of the Cr.P.C.*** comes after disposal of the trial that means to say, after having final verdict so, the order having under ***Section 452 of the Cr.P.C.*** is found influenced with the ultimate conclusive finding.

11. Normally, after conclusion of the trial, recording acquittal of an accused, will ultimately recognize his right to receive back the property which allegedly been recovered from his possession, but has got some exception, when the finding so recorded under the judgment is found skeptical. Apart from this, there happens to be consistent view that where right to possess comes under dispute, then in that circumstances, parties be directed to get their claim adjudicated by a Civil Court as the stage requires summary consideration. However, citation having at the respective end deals with the



normal rule. In ***Joharilal v. King-Emperor reported in A.I.R. 1949 Nagpur 17***, it has been held:-

*“ When an accused is given the benefit of doubt and acquitted of theft, it cannot be said that he was necessarily in lawful possession of the property which was the subject-matter of the theft and he is not, therefore, entitled to recover the property under **Section 517 Cr.P.C.** (Old Code).*

12. As referred hereinabove, the Appellate Court had not acquitted the appellant outrightly doubting over genuineness of prosecution case rather apart from doubting one of the articles so recovered from the shop of the Respondent No.2 does not tally, simultaneously, it was also observed that prosecution could not be able to substantiate, even accepting the seized article to be subject matter of dacoity that appellant was knowing since before that the property in question, was looted property. That means to say, neither occurrence nor deprivation of property during course thereof, has been questioned, nor there happens to be any kind of adverse finding over recovery of ornaments from the shop of Respondent No.2.

13. Mere mentioning the fact in the petition that the petitioner/ appellant is ready to pay the equal amount as per market value will not serve the purpose, more particularly in the



background of the fact that matter has been brought under appeal and during course of consideration of rival claim, the ultimate finding of the Appellate Court has been completely ignored by the lower Court.

14. Accordingly, the order impugned is set aside.
Appeal is allowed.

(Aditya Kumar Trivedi, J)

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