

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 46 of 2019**

- Manharan Lal Banjare S/o Late Shri Bundram Banjare Aged About 48 Years R/o Village Gidhouri, P. S. Gidhouri, Tahsil Kasdol, Civil And Revenue District Baloda Bazar-Bhatapara Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through The District Magistrate Balodabazar, District Baloda Bazar-Bhatapara Chhattisgarh.

----Respondent

For Applicant	: Shri Sunil Sahu, Advocate
For Respondent	: Shri Rahul Mishra, Dy. Govt. Advocate

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24.7.2019**

1. Heard the revision petition finally at the motion stage itself.
2. This revision is directed against the order dated 24.12.2018, passed in Criminal Appeal No.139/2018 by the Sessions Judge, Balodabazar, whereby the Sessions Judge has affirmed the judgment dated 24.10.2018 passed by the Judicial Magistrate First Class, Bilaigarh in Cr. Case No.663/2016.
3. Facts of the case are that the applicant was prosecuted under Section 4(A) of the Public Gambling Act, 1867. On receiving information, Police raided the shop of the applicant, where he was found involved in the business of gambling and vide seizure memo Ex. P2 and P3, cash amount of Rs.5,69,240/- was seized from the possession of the applicant. The matter was investigated

and charge sheet was filed against the applicant. After completion of trial, the applicant was acquitted of the charge under Section 4(A) of the Public Gambling Act vide judgment dated 24.10.2018. However, the trial court passed order for confiscation of the seized amount of Rs.5,69,240/- in favour of State government. Against the said order, the applicant filed an appeal before the Sessions Court, Balodabazar which was also dismissed on 24.12.2018 and order of the trial court regarding confiscation of the seized amount was maintained. Hence, this revision.

4. Learned counsel for the applicant submits that the orders passed by both the courts below are bad in law. Prosecution has failed to prove that the applicant was involved in gambling activities and the Court below after evaluation of evidence has acquitted the applicant of the charge under Section 4(A) of the Public Gambling Act, therefore, the applicant is entitled to get back his confiscated amount. He prays that the order of the courts below be set aside and an appropriate order may be passed.
5. It is a settled principle of law that when ingredients of the offence are not proved and the accused is acquitted from the charges then the seized property is to be handed over to the owner from whose possession it was seized. The learned trial judge and the Sessions Judge have passed the orders in routine manner without considering the fact that when the accused has been acquitted from the charges then without any sufficient reason, the seized property cannot be confiscated. Reliance has been placed on **N.Madhavan V. State of Kerala, AIR 1979 SC 1829** and the

orders of this Court passed in **Cr. Revision No.1131/2016** on 17.1.2017 and in **Cr. Appeal No.943/2017** on 3.10.2017.

6. On the other hand, learned counsel for the State supported the impugned judgment and order passed by the courts below and submits that the orders passed by the courts below are in accordance with law.
7. I have heard learned counsel for the parties and perused the record.
8. The Investigating Officer, S.K. Jangade(PW3) has stated in his evidence that he seized *Satta Patti* (speculative strips), Rs.3,19,240/- and Rs.2,50,00/- and other articles from the house and shop of the applicant. In cross examination para 8 also he has stated that he seized the cash amount of Rs.3,19,240/- and Rs.2,50,000/- from the possession of the applicant.
9. After going through the statements of the witnesses, especially, the statement of Investigating Officer- S.K. Jangde (PW3), it appears that the cash amount of Rs.5,69,240/- which was in possession of the applicant was taken from him during the raid by the Police and a case was registered and he was taken into custody.
10. The normal rule is that when an accused is discharged or acquitted the court should restore the property to the person from whose custody it was taken and in case of conviction the seized property should be restored to the person entitled. In **N.**

Madhavan V. State of Kerala (supra), the Hon'ble Supreme Court has held as under :

“One of such a well-recognised principle is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt- as in the instant case- that the property in question was seized from the custody of such accused and belonged to him”.

This Court has also reiterated this principle in **Cr. Revision No. 1131/2016** and **Cr. Appeal No.943/2017**.

11. Considering the facts and circumstances of the case and the principles laid down, it appears that the judgment of the trial Court under Section 452 Cr.P.C. and the order of the lower appellate court suffers from serious infirmity. Hence, limiting to the consideration of order under Section 452 Cr.P.C., this revision petition is allowed. The order passed by the trial court and the Sessions Judge with respect to disposal of confiscation of the cash amount of Rs. 5,69,240/- are hereby set aside. The case is remanded back to the trial Court for passing a fresh order under Section 452 of the Cr.P.C. for disposal of the seized property in the light of aforementioned principles and the order of this Court.
12. With the above observation, the revision stands disposed of.

Sd/

(Rajani Dubey)
JUDGE