

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1292 of 2018**

Firoz Khan S/o Sikandar Khan, aged about 52 years R/o Rambag near Vegetable Market, Dhamtari, P.S. & Tahsil Dhamtari, Civil and Revenue District Dhamtari (C.G.)

---- Applicant

Versus

State of Chhattisgarh through the District Magistrate Dhamtari, District Dhamtari (C.G.).

---- Respondent

For Applicant	:	Mr. Sunil Sahu, Advocate
For Respondent	:	Mr. K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

17/01/2019

1. With the consent of both the parties, the matter is heard finally.
2. Counsel for the Applicant submits that the Applicant was prosecuted under Section 4 (A) of the Public Gambling Act. During investigation of the case, vide seizure memorandum (Ex. P/2), apart from other theft articles, Rs. 15320/- were seized from the possession of the Applicant. After investigation, a charge-sheet was filed before the trial Court.
3. The trial Court vide judgment dated 18/04/2018 acquitted the Applicant for the offence punishable under Section 4 (A) of the Public Gambling Act, but while passing the said order of disposal of the seized property, has ordered that the cash seized from the Applicant be confiscated in favour of the State Government. Against the said order, the Applicant

filed an appeal under Section 454 of the Cr.P.C before the Sessions Judge, Dhamtari which was dismissed vide impugned order dated 15/06/2018.

4. Counsel for the Applicant further submits that the alleged amount has been seized from the possession of the Applicant. Since after trial, no offence has been proved against the Applicant and he has been acquitted, therefore, he is entitled to get the seized money.
5. State counsel opposes the prayer made by the counsel for the Applicant and supported the impugned order.
6. Before the trial Court, Investigating Officer Jamwant Deshmukh (PW4) has categorically stated that he seized the said cash from the possession of the Applicant. His statement is duly corroborated by Constable Pramod Sahu (PW3) and Constable Bhupendra Padamshali (PW5). Though independent seizure witnesses have not supported the said seizure, from the statements of Pramod Sahu (PW3), Jamwant Deshmukh (PW4) and Bhupendra Padamshali (PW5), it is clear that the said amount has been seized from the possession of the Applicant. The learned trial Court after appreciating all evidence adduced by the prosecution had acquitted the Applicant from charge framed under Section 4 (A) of the Public Gambling Act.
7. The normal rule is, 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.
8. In **N. Madhvan v. State of Kerala, AIR 1979 SC 1829**, while

interpreting Section 517 of the Code of Criminal Procedure, 1898 (Section 452 of the Present Code) the Apex Court has laid down as under:-

'The words "may make such order as it thinks fit" in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognized 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'.

9. The Applicant has placed reliance on judgment of this Court in the matter of *Kailash @ Kailu & Anr. v. State of Chhattisgarh* passed in Criminal Revision No. 1131/2016 vide order dated 17/01/2017, in which while ordering disposal of the property, this Court has followed **N. Madavan v. State of Kerala (supra)**.
10. Considering the facts and circumstances of the case and the principles laid down, it appears that the order of the trial Court under Section 452 of the Cr.P.C and the judgment of the lower Appellate Court suffers

from serious infirmity. Hence, this revision petition is allowed. The order passed by the learned trial Court and the learned Lower Appellate Court with respect to disposal of seized cash amount are hereby set-aside.

11. The case is remanded back to the trial Court for passing a fresh order under Section 452 of the Cr.PC for disposal of the seized cash in light of the aforementioned principles and the order of this Court.

Sd/-
(Arvind Singh Chandel)
Judge