

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 122 of 2008

Sunil Kumar Jain S/o late Motilal Jain, aged about 38 years, R/o. Village Takam, P.S. Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through - Police Station Khairagarh, District - Rajnandgaon, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Maneesh Sharma, Advocate
For Respondent/State	: Mr. D.P. Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-06-2020

1. This revision petition has been brought being aggrieved by the order dated 7.9.2017 passed by the Sessions Court rejecting the application filed by the applicant under Section 451 of the Cr.P.C.
2. It is submitted by learned counsel for the applicant that applicant – Sunil Kumar Jain was one of the complainant and aggrieved person. Although the FIR has been lodged by complainant – Trilok Chand (PW-13) but it is mentioned in the FIR itself that the articles and ornaments of silver were the belongings of this applicant. The prosecution has filed the charge-sheet against the accused persons, out of which, four accused persons have been tried and convicted whereas, the other two accused persons are absconding, therefore, their trial is pending. Learned Sessions Court has observed in paragraph 45 of the judgment dated 12.9.2007 in Sessions Trial No. 24 of 2005 that the seized articles were of the complainant and the aggrieved person. It was further observed in the impugned order by the Sessions Court that

the accused persons had placed no claim over the property seized from their possession. The only reason mentioned for rejecting the application is that the two co-accused persons are absconding and that the claim on the property under seizure has to be determined on the basis of the evidence to be brought in the prosecution case. It is also submitted that no further evidence was recorded by the Sessions Court subsequent to passing of this order. The case was heard finally and the judgment was passed on 12.9.2007, in which again the Sessions Court without passing any order for disposing of the seized property has held that since the co-accused persons are absconding, the property be kept in the Court custody. It is further submitted that the applicant has a rightful claim over the seized property as the accused persons made no claim and also the complainant himself has not made any claim over the silver items. He has himself stated that the silver articles belonged to this applicant. Therefore, this applicant was entitled for interim custody of the seized property. Hence, the order impugned suffers from infirmity and needs to be set aside.

3. Learned counsel for the State opposes the submissions made and the grounds raised in the revision petition. It is submitted that the seized articles are subject matter of evidence and it cannot be said that the trial in this case is concluded, as it is yet to begin against the absconding accused persons. It is also submitted that complainant – Trilok Chand (PW-13) has not been made a party in this application and the claim has been presented only by this applicant, therefore, his claim cannot be finally determined in this petition. Hence, it is prayed that this revision petition be dismissed.
4. Heard counsel for both the parties and perused the documents.
5. Complainant – Trilok Chand (PW-13) gave a written complaint vide

Ex. P/27 in the police station Khairagarh, in which he has mentioned that in the incident of dacoity, articles of gold were stolen from his possession and it is also mentioned that his brother – Sunil Kumar who is engaged in the business of silver articles, his belongings were also looted by the unknown culprits. On that basis, unnumbered FIR Ex.P/28 was lodged. Applicant – Sunil Kumar Jain who has been examined as PW-1 in the trial had given a list of the articles stolen from his possession which is exhibited as Ex. P/1 and this list has not been challenged in his statement before the Court. The silver articles that were seized in the investigation, have been identified in test identification parade vide Ex. P/15. As per the investigation, vide in seizure memo Ex. P/9 the articles mentioned at Sr. No. 3 to 12, in seizure memo Ex. P/12 at Sr. No. 1 to 23, in Ex.P/13 Sr. No. 1 to 19 and in Ex.P/18 Sr. 1 to 9 are the articles of silver that have been seized and identified in the test identification parade.

6. As the case against the accused persons present before the Court has been concluded and neither there had been any claim placed by the accused side nor by any other party and also looking to the fact present in the case itself that the articles of silver belonged to this applicant, I am of this view that this applicant is entitled for interim custody of this property.
7. After due consideration, the revision petition is allowed and the impugned order is set aside. It is ordered that the articles of silver which has been described in the paragraphs herein-above, shall be given on interim custody to the applicant on furnishing supurdnama as well as surety of the same amount on the valuation that is to be made by the trial Court itself, on such term that if the production of the seized articles is required in future for the purposes of the trial against absconding

accused persons, then the same shall be produced before the Court as per the order. At the same time, the order with respect to disposal of the seized property in Sessions judgment dated 12.9.2007 in Sessions Trial No. 24 of 2005 stands modified.

8. Accordingly, this revision petition is allowed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi