

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO.593 OF 2019

APPELLANT: Kamlesh Sitaram Nimbarte,
Aged about: 40 Years, Occupation: Nil
R/o Raje Raghuji Nagar, Sakardara, Nagpur
At Present Yerewada, Central Prison, Yerewada.

... Versus ...

RESPONDENTS: State of Maharashtra through Police Station
Officer, Pratap nagar, Nagpur.

Shri Mir Nagman Ali, Advocate for the Appellant.
Ms. Shamshi Haider, APP for the Respondent/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE OF JUDGMENT : 3rd FEBRUARY, 2021

ORAL JUDGMENT:-

Heard.

02] Admit.

03] The appeal under Section 454 of the Code of Criminal Procedure, 1973 raises challenge to Clauses 8 and 9 of the operative part of the judgment dated 22/02/2018 whereby learned Additional Sessions Judge, Nagpur has forfeited an amount of Rs.21,690/- in favour of the Government and has ordered to destroy chain and ring holding it to be worthless.

04] Learned counsel for the Appellant states that currency notes to the tune of Rs.21,690/- were seized from the Appellant herein. He further submits that the chain and the ring, which are ordered to be destroyed, are not worthless but are of gold and that the same were also seized from the Appellant. He submits that the Appellant having been acquitted for the offences punishable under Sections 384, 397 read with Section 34 of the Indian Penal Code and Section 3/25 of Arms Act, the seized articles viz. the currency notes, gold chain and ring are required to be returned to the Appellant.

05] Learned APP, on instructions, concedes that the currency notes to the tune of Rs.21,690/- were seized from the Appellant at the time of the arrest. She also concedes that the chain and ring referred to in Clause 9 of the order are not worthless but are of gold and that the same were seized from the Appellant.

06] I have perused the records. The Appellant herein was charged for offences punishable under Sections 384, 397 read with Section 34 of the Indian Penal Code and Section 3/25 of Arms Act. The said Crime No.395/2016 was registered pursuant to the First Information Report lodged by Dr. Ravindra Govindwar. It was the case of the prosecution that the Appellant along with other co-accused had with common intention dishonestly induced one Ratnashil Bhagat to deliver to them Mercedes Car. It was alleged that two days' later, the Appellant and the other co-accused

with common intention had induced the first informant to deliver a cheque of Rs.59,00,000/- by putting him under fear of death.

07] The Appellant was arrested on 26/11/2016. On the date of arrest, currency notes of Rs.21,690/-, gold chain and ring weighing 49.100 gms. and 10.010 gms. respectively were seized under Panchanama at Annexure-1. Upon completion of investigation, charge sheet came to be filed against the Appellant and other co-accused. The Appellant has been acquitted by the Trial Court holding that the prosecution has failed to establish the guilt of the Appellant beyond reasonable doubt. In view of the findings recorded by the learned Judge, the articles, which were seized from the Appellant, ought to have been released to the Appellant and the gold chain and gold ring could not have been ordered to be destroyed on an assumption that they were worthless. The impugned order reflects total non-application of mind and hence cannot be sustained.

08] Under the circumstances, the appeal is allowed. The currency notes to the tune of Rs.21,690/- referred to in Clause 8 and chain and ring referred to in Clauses 8 and 9 of the operative part of the order are ordered to be released in favour of the Appellant.

09] The appeal stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)