

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1546 OF 2017

Shadulla Habib Rukkaddin	... Petitioner
V/s.	
The State of Maharashtra	... Respondent

Mr. Pawan Malvi for Petitioner.
Mr. R.M. Pethe, APP for Respondent (State).
PSI – Rasal, Kurla Police Station.

CORAM : AMIT BORKAR, J.

DATED : 19th December, 2022

P.C.:

1. The petitioner was prosecuted for offence under Section 124 of Bombay Police Act, 1950. According to the prosecution on 27th July, 2008, the concerned Police Station had arranged blockade Near Lion Garden, L.B.S. Road at Kurla. The Police had stopped the car, wherein the accused was traveling. On search of the accused/petitioner, the Police found cash Rs.33,93,200/-. According to the prosecution, since the accused could not explain the source of cash, the concerned Police Constable lodged a report against the petitioner. After the completion of investigation, charge-sheet was filed and the petitioner was tried for offence under Section 124 of Bombay Police Act, 1950.

2. During trial, prosecution examined two witnesses. The petitioner examined his father-in-law and also examined another

witness, who was Chartered Accountant. DW-1 produced receipts to show that the gold jewellery was sold in April and May 2008 and the cash seized was that of the petitioner's father-in-law. On 8th May, 2015 learned Metropolitan Magistrate acquitted and sentenced the petitioner for a period of two (2) months and directed cash to be credited to the State after appeal period is over.

3. The petitioner challenged the order dated 8th May, 2015 in Criminal Appeal No.544 of 2015. Learned Sessions Court has partly allowed the appeal; acquitted the petitioner confirming the order of the learned Magistrate seized cash to be credited to the State.

4. Aggrieved thereby, the petitioner has filed the present Criminal Writ Petition.

5. Learned advocate for the petitioner invited my attention to paragraph no.15 of the impugned judgment. Paragraph no.15 reads as under :

“15. Accused led evidence. It was sufficient to hold that it was the amount obtained by selling jewelry by his father-in-law. He did not challenge the order rejecting the application of giving the cash to him is different aspect. He might be under fear that as cash is not accounted for, some action will be taken against him. Accused had reason to show that he had not stolen the cash”

6. On careful perusal of the observations made in paragraph no.15, it appears that the learned Sessions Judge quashed the conviction of the petitioner holding that the amount seized from the petitioner was obtained by selling gold jewellery by his father-

in-law. Considering the judgment and order of the learned Sessions Judge, particularly in paragraph no.15 that the petitioner had obtained the amount after selling jewellery by his father-in-law has attained finality, it was expected that the learned Sessions Judge ought to have issued directions for refund of the seized cash. Hence, following order.

- (a) Rule is made absolute in terms of prayer clause (a);
- (b) The amount of Rs.33,93,200/- shall be returned to the petitioner within six (6) weeks from today along with accrued interest, if any.

7. This Writ Petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)