

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-49020 of 2022
DATE OF DECISION :- 25.09.2023**

Muthoot Fincorp Ltd.

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Vivek Salathia, Advocate for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

PANKAJ JAIN, J. (Oral)

Petitioner is before this Court against the order dated 30.7.2022 passed by Additional Sessions Judge, Patiala whereby the application filed by the petitioner to furnish indemnity bonds pursuant to order dated 19.4.2021 (Annexure P-2) stands declined.

2. The petitioner is complainant in F.I.R No. 121 dated 16.5.2015 registered for the offence punishable under Sections 392, 395, 412, 342, 323, 120-B of the Indian Penal Code and Section 25 of the Arms Act, Police Station Tripuri town, District Patiala.

3. Petitioner, private non-banking financial corporation is involved in extending loan against jewellery. On the premises of the petitioner dacoity was committed by the accused leading to registration of the aforesaid FIR.

The trial stands concluded and the accused stand convicted. The judgment of conviction dated 19.4.2021 has been placed on record as Annexure P-1. The

jewellery which was the subject matter of trial was the case property. An application was moved by the petitioner for release of the same and the same stands allowed in part by the trial Court observing as under :-

“An application for releasing the currency notes of Rs.2,51,501/-and gold ornaments weighing 11258.5 grams filed by Muthoot Fincorp Limited is lying on the file. It is mentioned in the application that the ornaments were received by the complainant as bailee in the form of pledge, which are required to be returned to the customers, who have mental attachment to their respective ornaments. Learned counsel for the complainant has stated that the cash amount has already been deposited due to monetization by seeking order from the court and therefore, he does not press the application qua currency notes. Learned counsel has stated that at present the value of gold recovered is Rs.5 Crores approximately and complainant is ready to furnish the bond. The trial of this case is now concluded. It is proved fact that the gold ornaments were taken out from the possession of complainant, which are required to be released to the complainant. Therefore, the application is partly allowed. The recovered gold be released to the complainant on furnishing the bond of the complainant through its concerned authorized officer in the sum of Rs.5 Crores to the satisfaction of this court, subject to the provisions of Section 452 Cr.P.C.”

4. Application (Annexure P-3) was moved on behalf of the petitioner to furnish indemnity bonds in terms of the order dated 19.4.2021.

The same has been rejected by the trial Court observing as under :-

“I have given my thoughtful consideration to the arguments of learned counsel for the parties and have gone through the file. The applicant has sought the permission for furnishing indemnity bonds to the satisfaction of the court subject to the provision of Section 452 Cr.P.C. As per Section 452 Cr.PC the

order made under sub Section (1) shall not be carried out for two months or when an appeal is presented until such appeal has been disposed off. Once the appeal has been filed by the accused before Hon'ble Punjab & Haryana High Court, the order made in the sub Section of Section 452 Cr.PC cannot be carried out until the appeal is disposed off by Hon'ble Punjab & Haryana High Court. Accordingly, the application stands disposed off accordingly. File be consigned to the Judicial Record Room, Patiala.”

5. Learned counsel for the petitioner while assailing the aforesaid order submits that learned trial Court has relied upon provision as contained in Section 452 Cr.P.C, which is not even attracted in the present petition as the property is being released subject to execution of bond pursuant to sub-section (2). He further submits that there is no counter claim by any of the parties and admittedly for committing dacoity over the aforesaid property the accused stand convicted.

6. Per contra, learned State counsel on the other hand submits that the property sought to be released being the case property is matter of record and thus primarily it is between the Court and the petitioner as to how the said property has to be disposed of.

7. I have heard learned counsel for the parties and have gone through the record.

8. It will be apt to peruse Section 452 of the Code of Criminal Procedure which reads as under :-

“Section 452 in The Code Of Criminal Procedure, 1973

452. Order for disposal of property at conclusion of trial.

(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for

the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub- section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of subsection (2), an order made under subsection (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term " property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

9. In the considered opinion of this Court the reasoning recorded by the trial Court for not releasing the property despite there being order dated 19.4.2021 and that too when the application was moved for acceptance of the bonds cannot be sustained.

10. The provision as contained in Section 452 Cr.P.C has to be read in whole. Section 452(4) prohibits carrying out of the order made under Section 452 sub-section (1) of the Code of Criminal Procedure except for the properties which are livestock or are subject to speedy and natural decay or where the bond has been executed in pursuance to sub-section (2).

11. Admittedly, as per the order dated 19.4.2021, the petitioner is required to furnish the bond and thus bar as contained under Section 452(4) will be attracted in this case to deny release of the articles to the petitioner.

12. Resultantly, the petition is allowed. The impugned order dated 30.7.2022 passed by ASJ Patiala is set aside.

13. The trial Court is directed to accept the bonds furnished by the petitioner pursuant to the order dated 19.4.2021 and release the same against a valid receipt. It may be added here that the articles be photographed and video recording of the same be also kept as part of record (if not done by now) before release of articles.

(PANKAJ JAIN)
JUDGE

25.09.2023

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No