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* **IN THE HIGH COURT OF DELHI NEW DELHI**

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*Reserved on: 25.08.2023
Pronounced on: 07.11.2023*

+ **CRL.REV.P. 207/2018, CRL.M.A. 4451/2018, CRL.M.A. 4452/2018**

PANKAJ AKSHAN

..... Petitioner

Through: Mr. Archit Jain, Mr. Ashish Hira, Advocates

versus

STATE & ORS

..... Respondents

Through: Dr. (Maj.) J.C. Vashista, Ms. Yashika Sood, Ms. Annu Kadian, Advocates
SI Seetaram, PS Domestic Airport.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition has been filed under Section 397 and 401 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') seeking setting aside of impugned judgment dated 09.08.2017 passed by learned Additional Sessions Judge/Special Judge (NDPS), Dwarka, New Delhi in Criminal Appeal No. 440415/2016.

2. Brief facts of the case are that petitioner herein had lodged a



complaint with the police on 22.08.2006 whereby it was stated that on 20.8.2006, he alongwith his family had gone to Calicut from Delhi by Flight No. IC 657 and after reaching Calicut, he had found that somebody had stolen the jewellery of his wife at Delhi Airport from his luggage. The complainant had returned to Delhi and had given the details of the jewellery kept in the luggage. On his complaint, the FIR No. 96/06, under Sections 379/411/414/34 of Indian Penal Code, 1860 ('IPC') was registered at Police Station Palam Airport, New Delhi. After investigation, chargesheet was filed against seven accused persons namely Hari Singh, Pawan Kumar, Anil Kumar, Sunil Kumar, Kishan Pal, Rajinder Parsad and Satya Prakash (deceased). As per prosecution, it was discovered during investigation that accused Pawan Kumar, Hari Singh, Anil Kumar and Sunil Kumar were posted as loaders at the airport and they had committed the theft. It was alleged that the accused Pawan Kumar had handed over his share of jewellery to his father Kishan Pal, one of the accused in the present case, and said Kishan Pal in turn had sold the jewellery to Shri Ram Jewelers for consideration of Rs. 1,00,980/- out of which Rs 20,000/- each were given to Anil Kumar, Hari Singh and Sunil Kumar. It was alleged that accused Pawan Kumar with the help of his father Kishan Pal had sold the stolen jewellery to Sh Navneet Soni, proprietor of M/s. Shri Ram Jewelers, and it was melted by one Ajay Maratha and said proprietor of M/s. Shri Ram Jewelers had subsequently sold the melted jewellery to M/s. Laxmi Jewelers. One melted piece of gold was also recovered. It was also alleged that accused Sunil Kumar had sold the stolen



property to proprietor of National Jewellers Satya Prakash (deceased accused) for an amount of Rs. 39,000/-. On disclosure of accused Sunil Kumar, Satya Prakash (deceased accused) was arrested and 90 grams of gold was recovered and seized in melted condition from his shop. An amount of Rs. 30,000/- from accused Kishan Pal, Rs. 30,000/- from accused Rajinder Prasad, Rs. 20,000/- from accused Anil Kumar and Rs. 22,500/- from accused Pawan Kumar and Hari Singh and Rs. 10,000/- from accused Sunil Kumar at their instance had been recovered and as alleged, this money was obtained by the accused persons after selling the stolen jewellery.

3. Vide order dated 01.09.2006, the concerned Magistrate had then allowed one necklace, two ear rings, two gold chain, one small finger ring and a sum of Rs. 72,500/- to be released to the complainant/ petitioner herein on proper identification, but application for release of melted gold was declined for want of identification/evidence. On 13.10.2006, further Rs. 47,000/- was allowed to be released to the complainant and request for release of melted gold was again declined. On 24.10.2009, accused Satya Prakash passed away died and the proceedings against him were abated, and consequently, an application for substitution of LRs of the deceased was moved for the proper adjudication of two pending applications filed earlier on behalf of accused Satya Prakash. In the meanwhile, the matter was settled between the complainant/petitioner herein and the remaining six accused persons. Eventually, there were two applications before the learned Metropolitan Magistrate-09, Dwarka Courts, New Delhi raising rival claims over the 90 grams of



gold recovered from the accused Satya Prakash (deceased).

4. Vide order dated 10.07.2012, the learned Metropolitan Magistrate had allowed the application filed by the petitioner herein and the application filed by the LRs of the deceased accused Satya Prakash was dismissed. Thereafter, the order dated 10.07.2012 was reversed by the learned ASJ in the appeal vide order dated 09.08.2017.

5. Aggrieved by the aforesaid, the present revision petition has been filed by the complainant/petitioner assailing the order dated 09.08.2017.

6. Learned counsel for the petitioner argues that the learned ASJ has committed an error by setting aside the order dated 10.07.2012 passed by the learned Trial Court. It is stated that the learned ASJ failed to appreciate that statement of accused or witness under section 161 Cr.P.C can be looked into and prohibition under Section 162 of Cr.P.C is not attracted while deciding applications under Sections 452 and 457 of Cr.P.C. It is argued that the duty of Magistrate is to find out the person best entitled for possession and not to decide about ownership of property in question and the learned Metropolitan Magistrate had rightly decided that the petitioner herein was the best person entitled to possession of 90 grams of gold. It is stated that the wife of deceased accused had no right to prefer an appeal under Section 454 of Cr.P.C. against the order of the learned Trial Court for release of the stolen articles. It is also contended that the learned ASJ has failed to appreciate the findings of learned Metropolitan Magistrate who had observed that 90 grams gold was recovered from



accused Satya Prakash and the accused Sunil Kumar in his disclosure statement had stated that he had sold the gold to Satya Prakash for Rs. 39,000/- and further that accused Rajinder Prasad had stated in his disclosure statement that his son i.e. accused Sunil Kumar had given him Rs. 37,000/- after selling the jewellery. It is also stated that it was the complainant/petitioner who was the first one to move an application seeking release of melted gold in the year 2006 and the accused Satya Prakash had moved an application only in the year 2009. Therefore, it is prayer that present petition be allowed.

7. Learned counsel for respondents, on the other hand, argues that there is no infirmity in the impugned order passed by learned ASJ whereby the order passed by learned Metropolitan Magistrate was set aside. It is argued that the disclosure statements of the accused persons are not admissible in law and thus, it cannot be said with certainty that 90 grams of gold recovered from accused Satya Prakash was same gold which was melted from the jewellery belonging to the complainant. It is also argued that when the matter was compounded between the remaining accused persons and the complainant *vide* statement dated 19.04.21012, the complainant had mentioned in the statement that he has been compensated for the loss incurred by him and he had given statement that about 112.200 grams gold which had been recovered will be his property and accused will not claim it, however, he had remained silent about 90 grams of gold. It is also stated that once the complainant has been compensated and the matter has been settled, coupled with the fact that proceedings against accused Satya Prakash already stood abated earlier, the same



amounts to withdrawal of allegations in the complaint. It is further submitted that the application of complainant seeking release of melted gold had earlier been dismissed on 01.09.2006 by the then learned ACMM on the ground of non-identification of the melted gold. It is stated that on the death of accused Satya Prakash, his LRs had a right to pursue the applications filed on behalf of the accused and since the trial did not conclude in respect of accused Satya Prakash as proceedings against him stood abated, the LRs of the deceased had a right to recover the gold of 90 grams under Section 457 of Cr.P.C. It is argued that since 90 grams gold was recovered from Satya Prakash and there was nothing on record to connect the same with the jewellery of the complainant, there is no illegality in the impugned order passed by learned ASJ.

8. The arguments addressed by the learned counsel for petitioner as well as the learned counsel for respondent no. 3 and 4 have been heard. The written submissions placed on record by both the counsels alongwith case laws have been considered and the material placed on record alongwith the Trial Court Record has been perused.

9. This Court notes that in the present case, *vide* order dated 10.07.2012, the learned Metropolitan Magistrate had allowed the application of the complainant i.e. petitioner herein for release of 90 grams gold, while dismissing a similar application filed by the LRs of deceased accused Satya Prakash from whom the said gold in melted form was recovered. Thereafter, on an appeal being filed by the LRs of the said accused challenging the order dated 10.07.2012, the learned ASJ had set aside the order of the learned Magistrate and had



held that the gold which was recovered from the said accused could nowhere be connected with the jewellery of the complainant and thus, the application of the complainant was dismissed and the application of LRs of the deceased accused i.e. respondent no. 2/3/4 herein was allowed.

10. After going through both the aforesaid orders as well as the trial court record, this Court notes that in the present case, vide order dated 01.09.2006, the concerned learned Magistrate had allowed one necklace, two earrings, two gold chains, one small finger ring and a sum of Rs. 72.050/- to be released to the complainant/petitioner on proper identification. However, it was observed by the learned Magistrate that the item mentioned in serial number 4 i.e. one oval shaped gold piece made after melting the jewellery cannot be released at this stage since there is no identification of the said item and the same was recovered from the jeweller who had purchased it in a molten state, and it was also observed that under these circumstances, the right of the complainant over the same can only be decided after trial of the accused. The order dated 01.09.2006 reads as under:

“...I have gone through the copy of the TIP proceedings. As per the report the accused has correctly identified one Necklace and two ear rings, two gold chains and one small finger ring. The said articles are directed to be released to the applicant on execution of Superdarinama to the tune of Rs.80,000/- before the IO concerned on the condition that it shall be produced before this court as and when so directed. The item mentioned at serial no. 1 i.e. one oval shaped gold piece made after melting the jewellery cannot be released at this stage, since there is no identification on the said item and the same was recovered from the jeweler who had



purchased it in a molten slate. Under these circumstances the right of the complainant over the same can only be decided after trial of the accused. The applicant also seeks the return of cash of Rs.72,500/- recovered from the accused person. The investigating officer has no objection to its release. He submits that the accused may be asked to file an indemnity bond or security for the same. No other person has come to claim the currency so far. I am of a considered view that no useful purposes would be served by keeping the currency in the Malkhana. Hence the same is being released to the applicant on his furnishing an indemnity bond in sum of Rs.72,500/- with an undertaking that in case if issue is decided against him, the amount value shall be deposited in the malkhana. Application is disposed off accordingly..”

11. Thereafter, the complainant had again moved an application for release of cash amount and melted gold and vide order dated 13.10.2006, it was observed that the request for release of melted gold had already been dismissed earlier since identification had not been done in respect of the same. However, the release of cash amount of Rs. 47,000/- was allowed also considering the fact that no other person had come to claim the said cash. This order reads as under:

“Heard arguments on the application for release of cash amount and melted gold. The request for release of melted gold has already been dismissed vide order dated 1.9.06 since the identification has not been done in respect of the same. However, in so far as the cash is concerned, no other person has come to claim the said cash and no useful purpose would be served by keeping the same in the Malkhana of the police station.

In view of the above, the amount of Rs.47,000/- (Rupees Forty Seven Thousand Only) is directed to be released to the applicant on his furnishing Indemnity Bond of the like amount before the IO concerned on the condition that in case if the issue is decided against him, the amount be re-deposited by him in the Malkhana. Application stands disposed off.”



12. This Court notes that the deceased accused Satya Prakash had filed an application seeking re-investigation of the case by some other authority and had also moved an application seeking release of the gold recovered from him on superdari. The same has been recorded in the order dated 08.09.2009 which reads as under:

“...Ld counsel for the accused Sat Parkash and Anil has moved an application making a request for sending the matter for re-investigation by some other authority. He has also moved an application on behalf of the accused Sat Parkash seeking release of the Gold on superdari.

Copy given to the Id APP for the state...”

13. However, immediately thereafter, the accused Satya Prakash had unfortunately passed away and *vide* order dated 06.01.2010, upon filing of death verification report of the said accused, the proceedings against him had abated even before the commencement of trial in the present case. On 07.05.2010, learned counsel for the accused Satya Prakash had stated that he had moved an application on behalf of accused for release of the gold on superdari, but since the said accused had already expired, a separate application for substitution of LRs of the accused would be moved for disposal of the application seeking release of case property.

14. It is further noted that vide order dated 05.12.2011, learned Trial Court had recorded that the complainant/petitioner herein had moved an application seeking release of gold recovered from the accused Satya Prakash and accused Shri Prakash. It is also recorded in the order that a similar application had been moved by the LRs of



the deceased accused Satya Prakash and the fact that vide order dated 01.09.2006, similar relief was denied to the complainant. It was also recorded that the complainant/petitioner had moved this application because he had come to know that a similar application had been filed by accused Satya Prakash. The relevant portion of order dated 05.12.2011 reads as under:

“...Complainant has moved an application making a request to release of gold recovered from the accused Sat Prakash and Shri Prakash , Proprietor of Laxmi Jewelers.

It was pointed out that similar application has been moved by the LRs of the deceased Satya Prakash. My attention was drawn towards the order of Ld. Predecessor dt. 1/9/2006 whereby the request in question of the complainant was declined.

Ld. Counsel for the complainant submitted that he has moved present application because he came to know that some application has been moved by the LRs of the deceased and the application moved on behalf of complainant was declined by the Ld. Predecessor.

Heard and perused the record.

Ahlmad is directed to trace the order dt. 1/9/2006 and flag the same...”

15. The above discussion, therefore, clearly points out to one fact that it was the accused Satya Prakash who had initially moved an application in September, 2009 for the release of gold recovered from his premises on *supardari* and the complainant had moved the application in December, 2011, and these two applications were decided by the learned Trial Court vide order dated 10.07.2012. A perusal of the application filed by the complainant itself reveals that it is the own case of complainant that the accused Satya Prakash had



moved an application for release of 90 grams of gold which was pending before the Court and the complainant had come to know about the same after a few years since he was serving a period of 3 years at Srinagar and Rajasthan border. Therefore, at the outset, this Court notes that though the complainant had, at the very initial stage i.e. when the investigation was not even complete, moved an application in the year 2006 for release of melted gold which was dismissed by the then learned Magistrate, the accused Satya Prakash had then also moved an application in the year 2009 seeking release of the melted gold in his favour and thereafter the application of the complainant which had been allowed vide order dated 10.07.2012 was filed only in the December, 2011.

16. Moving further, records also reveal that vide order dated 28.03.2012, it was recorded by the learned Magistrate that the parties concerned were trying to reach a settlement and all the accused had also submitted that negotiations were going on with the complainant. Thereafter, on 18.04.2012, Court was informed by the counsel for complaint that the parties were ready to settle the matter and in view of the settlement, all the accused persons had given Rs. 1.8 lakhs to the complainant.

17. On 19.04.2012, the learned Magistrate had observed that the statement of complainant had been recorded separately in which he had stated that he was ready to compound the offence with the remaining accused persons out of his own free will and consent. The application earlier filed by the accused Satya Prakash prior to his passing away seeking re-investigation of the matter was also



dismissed by the learned Magistrate on the same day on the ground that since the matter was compoundable and the complainant had given his statement for compounding the matter against all the six accused and since the accused Satya Prakash had already passed away, no fruitful purpose would be served by moving the state machinery in motion again as the complainant who is the victim of the case wishes to settle the matter.

18. Having taken note of the orders dated 01.09.2006 and 13.10.2006 passed in the present case, when certain cash amounts as well as jewellery items were released in favour of the complainant as well as the settlement arrived at between the parties when the complainant had received an amount of Rs. 1,80,000/- as full and final settlement against the remaining accused person, this Court finds merit in the observations of the learned ASJ in the impugned order in which it was observed that the petitioner herein had already got released the cash amounts which were recovered from the accused persons and which as per the case of prosecution were proceeds of the sale of the stolen articles of the complainant, and further that he had also received certain jewellery items and thereafter had also received an amount of Rs.1,80,000/- towards the losses incurred by him. Further, while entering into the settlement with the remaining six accused person since the accused satyaprakash had already died in the petitioner herein had made no mention of the 90 grams gold as to whether he intended to claim that or not since this statement made by the petitioner was that the settlement entered into between him and their queues versions was towards the losses



which were incurred by the petitioner.

19. The learned ASJ had also rightly pointed out that the investigation officer had not brought on record anything to show that the 90 grams gold in melted state was outcome of the jewellery belonging to the complainant and reliance in this regard was placed by the learned ASJ on the order dated 25.02.2011 passed by the then learned ACMM. This Court has also gone through the order dated 25.02.2011 when the case was fixed for consideration on point of charge, and it was observed by the concerned Court that the melted jewellery was not identified by the complainant and it was not explained that on what basis the investigating officer had observed that the melted gold belonged to the complainant. It was also observed that one of the jewelers namely accused Satya Prakash was made an accused but the other two jewelers had not been made accused on the ground that they had purchased jewellery in good faith but Satya Prakash had not purchased jewellery in good faith, without assigning any basis as to how such conclusion was arrived at by the investigating officer.

20. It has also been observed by the learned ASJ that though the learned Trial Court had discussed the law on point correctly, but had failed to apply the same correctly on the facts of the present case. It was also observed that the learned Trial Court had committed an error by relying upon disclosure statements which are not admissible *per se* and then by accepting those disclosure statements made by co-accused against accused Satya Prakash

21. As regards the law on point, this Court notes that the learned



Magistrate in its order dated 10.07.2012 had discussed in detail the scheme of Sections 451, 452 and 457 and several decisions of different High Courts on different aspects concerning the interpretation of these provisions. In this regard, this Court deems it appropriate to refer to the decision of the Hon'ble Apex Court in case of **Ram Prakash Sharma v. State of Haryana (1978) 2 SCC 491** wherein the difference in between the three provisions was highlighted in the following manner:

“...Chapter 34 of the Criminal Procedure Code deals with disposal of property. There is a trichotomy in the sense that where property has been seized by the police, but not produced before the court, the power to dispose it of is covered by section 457. Where property has been seized and/or otherwise produced before the court, the manner to dispose of such property is governed by sec. 451. If the question of disposal arises after the enquiry or trial in any criminal court is concluded, the disposal of the property involved in the case is governed by sec. 452...”

22. This Court notes that on one hand, the learned Magistrate in the order dated 10.07.2012 had observed that Sections 451 and 457 dealt with custody/interim stage whereas Section 452 dealt with the stage after conclusion of trial, and it was observed that since the trial could not commence against the accused Satya Prakash and the proceedings had to be abated due to his death, his case would not fall in the category of ‘conclusion of trial’ and therefore, Section 452 would not be applicable and rather Section 457 would be applicable in the present case. However, at the same time, the learned Trial Court while relying upon a judgment titled **Bal Kishan & Anr. v. State of Rajasthan & Ors. 1984 Cri.Lj. 308** had observed that the



statements under Section 161 of Cr.P.C. and disclosure statements of accused could be relied upon by the Court after conclusion of trial since the bar only relates to not relying upon such statements against the accused during the course of trial. Thus, on one hand, the learned Trial Court was of the view that in the present case, the trial had not concluded as such, and on the other hand, it was of the opinion that the disclosure statements of the accused can be relied upon after the conclusion of trial.

23. Furthermore, the learned Trial Court, while relying upon certain judgments, had observed that under normal circumstances, on acquittal or discharge, the property would have to be returned to the person from whom it was seized but when there were circumstances showing that the culprit had not claimed the property belonging to him specifically, and when there were no grounds to hold that the property could belong to him, then it would be unreasonable to return the stolen property to the accused person.

24. However, significantly in the present case, there was no evidence on record to suggest that the melted piece of 90 grams of gold recovered from the accused Satya Prakash belonged to the complainant/petitioner herein. It is also crucial to note that it is not a case where the recovery was made from a person who could not have been in possession of such gold since the accused Satya Prakash was a proprietor of a jewellery shop namely National Jewellers and recovery of a molten piece of gold from his shop cannot *ipso facto* lead to a conclusion that the gold would have been melted from the jewellery of the complainant, when there was no evidence to suggest



the same, which was also recorded by the learned Trial Court in its order dated 25.02.2011.

25. Therefore, in these circumstances, this Court finds no infirmity with the order of the learned ASJ and the same is accordingly upheld. Needless to say, the parties concerned shall have the option of availing appropriate remedies and proving their titles in court of competent jurisdiction over the alleged property.

26. Accordingly, in view of aforesaid observations, the present petition stands dismissed alongwith pending applications.

27. Copy of this order be forwarded to the learned Trial Court for further action.

28. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

NOVEMBER 7, 2023/ns