

**(1989) 01 MAD CK 0055**

**In the Madras High Court**

**Case No :** Criminal R.C. No's. 146, 227 and 228 of 1985

Dr. C. Arumugam, C.P. Jagannthan and A.H. Subramania  
Sharma

APPELLANT

Vs

Parasamal, Lalith Kumar and State

RESPONDENT

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**Date of Decision :** 13-01-1989

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 452, 452(1), 452(5)  
Penal Code, 1860 (IPC) — Section 380, 457(1)

**Citation :** (1989) LW(Cri) 194

**Hon'ble Judges :** Bhaskaran, J

**Bench :** Single Bench

**Advocate :** V. Gopinathan and Mr. Prakash, for the Appellant; B. Sriramulu and Mr. A.N. Rajan, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Bhaskaran, J.—In these three revisions, though the Petitioners are different, Respondents are the same and since common question arises

regarding the disposal of the case property in C.C. Nos. 11, 10 and 70 of 1982 on the file of the Judicial First Class Magistrate, Coimbatore, all

the revisions are dealt with together.

2. The Petitioners herein are the residents of Coimbatore. The Petitioners gave complaints to 3rd Respondents about the burglary that took place

in their houses on different dates and regarding the theft of valuable jewels. According to the Petitioner in CrI.R.C. No. 146/85, his house was

burgled on 20-3-1980 and valuable gold jewels and silver vessels worth about Rs. 34,250 were stolen; according to the Petitioner in CrI.R.C. No.

227/85, his house was burgled on 23-6-1980 and gold jewels and silver vessels worth about Rs. 37,875 were stolen away; and according to the

Petitioner in CrI.RC. No. 228/85, his house was burgled on 2-3-1980 and gold jewels and silver articles worth about Rs. 1,77,540 were stolen

away. On such complaints, the police registered separate cases; arrested two persons and charge sheeted them before the Judicial First Class

Magistrate, Coimbatore. On the basis of the confessional statements given by the accused and on identifying the persons to whom the accused

sold the stolen jewels, the police recovered from the shop of Respondents 1 and 2, who are registered gold dealers, certain gold jewels, which are

claimed to have been converted into new gold jewels after melting the stolen gold jewels. The accused were convicted and sentenced u/s 457(1)

and 380 I.P.C. , on their own admission. Having regard to the quantity of jewels seized and the quantity of jewels claimed to have lost, the learned

Magistrate directed the return of the jewels seized to the Petitioners herein. Aggrieved against the order of the learned Magistrate regarding the

return of the seized jewels to the Petitioners herein, the Respondents 1 and 2 preferred appeals before the learned sessions Judge, Coimbatore.

The learned Sessions Judge set aside the order of the learned Magistrate and remanded the matter regarding the disposal of the case property, to

the learned Magistrate with a direction to take evidence as to the ownership of the jewels before ordering disposal. The learned Magistrate, after

taking evidence again directed the return of the jewels to the Petitioners herein. Aggrieved against that order, the Respondents 1 and 2 preferred

C.A. Nos. 227, 226 and 225/84 before the Principal Sessions Judge, Coimbatore and the learned Sessions Judge, reversed the order of the

learned Magistrate and directed the return of the jewels seized to Respondents 1 and 2. Hence the present revisions have been filed by

complainants.

3. Before the trial Magistrate, the 2nd Respondent herein was examined as P.W.I. According to him, C.W.I, Police Inspector and another

Inspector came to his shop on 11-2-1980 and seized gold jewels weighing 267.200 grams after making necessary endorsement in G 12 register

marked as Ex.P1 without assigning any reason. Earlier to that he was compelled by the Sembiam Police to give 470 grams of gold but he refused

to give any gold as such. He sent petitions to Chief Minister and Higher Police Official against their conduct. The gold Jewels seized from him were

not stolen jewels and he gave petitions to Assistant Collector of Excise, about the seizure of gold jewels by the Police. According to C.W.1, the

first accused gave a confessional Statement to the effect that he had sold the gold jewels to Lalith Kumar of Chintadripet 2nd Respondent herein

through Sundaram Achari; that he took Sundaram Achari. examined as C.W.2 to the shop of the 2nd Respondent with a search warrant and on

interrogation, the 2nd Respondent admitted that he purchased gold jewels from C.W.2 and melted the same and converted into new gold jewels

and that he seized the jewels identified by the 2nd Respondent in the presence of witnesses. According to C.W.2 Sundaram Achari, in the year

1980 and subsequent years one Kuppuswamy and Loganathan came to his house at T. Nagar along with gold jewels and requested him to sell the

same and accordingly he arranged for the sale of gold jewels with various parties and certain gold jewels were sold to 2nd Respondent for Rs.

20,000. C.W.2 further stated that he did not know the jewels sold were all stolen jewels.

4. On the basis of the materials gathered in the course of investigation and the evidence of P.W.1 and C. Ws.1 and 2, and taking into consideration

the confessional statement made by accused admitting their guilt the trial Magistrate held that in view of Section 452(5), CrI.P.C, the jewels seized

from the shop of Respondents must have been made from and out of the old jewels purchased by them from C.W.2, which were stolen from the

houses of three Petitioners. Consequently the learned Magistrate ordered the return of the jewels seized to the complainants. On appeal, the

learned Sessions Judge took note of the averments that some time before the seizure of the gold jewels from the shop of Respondents (1 & 2) the

2nd Respondent sent petitions to the chief minister and higher police officers against the police when they warned him of dire consequences if the

Respondent did not part with 470 grams of gold jewels, and subsequent to the petitions, the Police seized the jewels from the shop of 2nd

Respondent. Therefore, the learned Sessions Judge held that the explanation of the Respondents that the jewels seized are not stolen jewels has to

be accepted, when there is no specific evidence to show that the gold jewels seized from the shop of Respondents are all made out of the stolen

jewels after melting. It is further pointed out by the learned Sessions Judge, that the evidence of C.W.2 is vague, that there is a long delay in

between the dates of theft of jewels and the confessional statement made by the accused and the subsequent recovery of jewels from the shop of

2nd Respondent. Under such circumstances, the learned Sessions Judge reversed the order of the learned Magistrate and directed the return of

the jewels seized to Respondents 1 and 2.

5. The learned Counsel for the Petitioners contended that with the sufficient materials available on record, the learned Magistrate has rightly

directed that the gold jewels and silver vessels seized be returned to the Petitioners; that for the return of case properties u/s 452 Cr.P.C, no

elaborate enquiry is required and the trial Magistrate can look into not only the admitted evidence but also other materials like the statements of the

witnesses, confessional statement of the accused. It is further contended by the learned Counsel for the Petitioners that the accused had admitted

the guilt saying that the stolen jewels were sold to Respondents through one Kuppuswamy and C.W.1 in the course of investigation that he

purchased the jewels from C.W.2 and converted the same into new jewels. Such evidence, according to the learned Counsel for the Petitioner,

can be looked into for the disposal of the property as an interim measure. Further, the order passed by the learned Magistrate regarding the return

of the case property is not a final order and it is always open to the aggrieved party to move the Civil Court to establish his title to such case

property. In support of his contention, learned Counsel for the petitioners relied on Bala Kishan v. State of Rajasthan 1984 Cr.L.J. 308, wherein it

was observed as follows.

The statement of an accused or a witness can be looked into for disposal of the property, which takes place at the conclusion of the enquiry or

trial of a case.

The words at any enquiry or trial in respect of any offence under investigation" in Section 162, Code of Criminal Procedure imply that such a

statement cannot be used during any enquiry or trial for the offence. But the use of such a statement recorded u/s 161, Cr.P.C. is not prohibited

for any other purpose or in a subsequent stage of the same case after when the trial is concluded. The reception of such a statement is not

prohibited for any purpose other than in the enquiry or trial

The learned Counsel for the Petitioners further relied on R. Munuswami Vs. State

(C-1 Police) and Another, wherein it has been observed as follows:-

An order for delivery of property to any person, which the court makes under the provisions of Section 452(1) CrI. P.C, is based only on the immediate right to possession and does not and could not conclude the right or title of any person to the ownership of the property concerned. It is always open to the real owner to set the appropriate law in motion to establish his title to the property and recover it, if such a contingency exists from the person in whose custody the property stands delivered. The orders passed under the CrI. P.C. do not conclude rights or title to the property.

In the decision reported in J. Ramachandran v. I.P. Sangili 1985 L.W. Cri. 14., the complainant had lost his jewels and on his complaint the Police arrested the accused and recovered certain jewels from another person, who received them from the accused. At the time of trial the person who was stated to have received the jewels from the accused turned hostile and the case ended in acquittal. While acquitting the accused, the trial court directed the return of the jewels seized to the complainant. Aggrieved against that order, the person who stated to have received the jewels from that accused filed on appeal before the learned Sessions Court for the return of the jewels to him. The learned Sessions Judge, directed the return of the jewels to the person who stated to have received the jewels from the accused. On revision, the learned Judge reversed the order of the learned Sessions Judge and restored that of the learned Magistrate, holding that for an order u/s 452 CrI.P.C, there is no need of evidence in the strict sense of the word, because the court is not finally deciding on the matter and all the materials on record can be looked into by the court in order to arrive at a proper conclusion. As the complainant had already taken possession of the jewels pursuant to the order of trial Magistrate, the learned Judge further ordered that he shall not alienate them or part with them in any manner for a period of three months so as to enable the other party to move before the Civil Court for the recovery of the material objects (jewels).

6. Applying the above principle and in view of the admission made by P.W.1 before the investigating Officer that he purchased certain jewels from

C.W.2 and converted the same into new jewels corroborative evidence of C.W.2 and the confessional statement of the accused, it be prima facie

came to the conclusion that the jewels seized by the Police are the jewels made out of the jewels stolen by the accused from the house of

Petitioners by melting them. Though this conclusion is not final, for the purpose of the disposal of the case property u/s 452 CrI. P.C., the learned

Magistrate is justified in ordering return of the jewels to the Petitioners-complainants. The only reason pointed out by the learned Sessions Judge

while reversing the order of the learned Magistrate is that P.W. 1 had sent petitions to the Chief Minister and other higher police officers about the

threat meted out by the Police against him and this circumstance would clearly show that the 2nd Respondent would not have received any stolen

property through C.W.2. Further, it is the case of the Respondents that against the seizure of 267.200 grams of gold, they filed a writ petition.

There are not sufficient grounds to reverse the decisions of the trial Magistrate especially where the Respondents failed to produce the best

available evidence as indicated in the next para.

7. It has to be noted that as per Excise Rules, the jeweller has to maintain two Registers known as 11 Register and 12 Register, the former being

maintained for "incomings" and the latter being maintained for "outgoings". Though the 12 Register has been marked to show that the Police had

received 267.200 grams of jewels from Respondents, the 11 Register has not been produced by P.W.1, though admittedly maintained by him,

which will show the actual purchase of gold by P.W.1. Merely because the Respondents are the registered dealers in gold, it cannot be contended

that no duty is cast upon them to disclose or produce the 11 Register. When the Respondents were in a position to explain the source of gold out

of which they made the new jewels, which are the subject matter of this case, they could have very well produced the 11 Register and explained

how and when they purchased gold. In the absence of such Register, the learned Magistrate is justified in ordering return of the jewels to

complainants.

8. In view of the above, the order of the learned Magistrate is perfectly correct. Consequently the order of the learned Sessions Judge is set aside

and the order of the learned Magistrate is restored. However, the jewels seized

shall be returned to Petitioners only after four months from today  
so as to enable the Respondents to move the civil court to establish their title to  
the jewels seized. On the Respondents moving the Civil court the  
return of the jewels will be subject to the decision of the Civil court. These  
revisions are allowed on the above terms.