

(2002) 12 BOM CK 0009

In the Bombay High Court

Case No : Criminal Appeal No's. 140 and 317 of 1999

Jhaverilal Popat Dedhia

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451

Citation : (2003) BomCR(Cri) 891 : (2003) 3 MhLj 221

Hon'ble Judges : J.G. Chitre, J

Bench : Single Bench

Advocate : Keshwani and J.B. Patel, in Criminal Appeal No. 317 of 1999 and None in Criminal Appeal No. 140 of 1999, for the Appellant; K.V. Saste, Assistant Public Prosecutor in Criminal Appeal Nos. 140 and 317 of 1999, for the Respondent

Final Decision : Allowed

Judgement

J.G. Chitre, J.—Shri Keshwani submitted that the learned trial Judge has held that items mentioned in the annexure Exh. "C" are not belonging to the accused (excluding the absconding accused No. 5) and therefore, the learned trial Judge should have handed over those articles to the complainant, either on bond or without bond, because, those items are mentioned in F.I.R. Shri Keshwani further submitted that it is not possible for a jeweller or a shop keeper to maintain the register, which would be showing the items exhibited in his shop clearly. He submitted that there may be some jewellers or shopkeepers who may not be so clever to maintain the register in proper way, so as to convince the Court that they are entitled to get those articles returned after a Criminal case is decided. He submitted that there was no reason for the trial Court to direct that those articles be confiscated to State Government.

2. Shri Keshwani further submitted that those articles have been identified by the complainant or his witnesses in the Court, when they gave evidence in the trial and none of the accused has claimed those articles as belonging to them as the

cross-examination shows. The statement made in open Court on oath is sufficient to prove his ownership of those articles.

3. Shri Saste submitted that those articles which have not been proved to be belonging by the complainant or his witnesses deserves to be confiscated to Government. He justified the order which has been assailed by this appeal.

4. It is a matter of experience that even in Jeweller's shops some articles do lie without there being entry of it because, those articles are handed over to jewellers for repairs. Some jewellers may not be smart enough to record their description in the register carefully, so as to prove the ownership clinchingly. They are simpletons even in cities who are, not aware of such eventualities. A proper weightage has to be given to the rush, hustle and bustle and number of transactions transacted in the said jewellers shop, who are generally frequently visited by the members of society. Therefore, when there is no counterclaim made over such articles and when a mention has been made about those articles in the F.I.R. and when those articles have been identified by goldsmith, jewellers or a shop keeper and when that identification has been accepted by Court as proper and valid, such articles should be returned to them on bond. Keeping in view the possibility of appeals, revisions and further proceedings, whenever such articles are returned to such claimants-complainant on bond, they should maintain its nature as it is and whenever directed by the Court should produce for its perusal or its inspection. At the same time the photographs of such articles be taken by such complainant or the claimants and those photographs should be kept in the record of the Court, so as to allow the Court to have the picturised idea of such ornaments, whenever witnesses are required to see such photographs.

5. The Courts are required to keep pace with experience. The administration of justice contemplates the comforts of complainant, accused and witnesses who come to the Courts for helping the cause of administration of justice. In these days of escalating prices, if the ornaments are detained in Court for months together the persons from whose possession they have been taken out suffer very much. On account of keeping of those ornaments in muddemal room those ornaments' look, luster, beauty fineness of quality diminishes. Therefore, such attitude should not be adopted, unless it is very much necessary.

6. Thus, this appeal is hereby allowed. Item Nos. 22, 28, 29, 30, 33, 61, 62, 63 be returned to the appellant/original complainant on furnishing a bond to the tune of Rs. 5 lacs. He shall produce those ornaments in the Court, whenever Courts so orders. He is also to produce those ornaments before this Court when Criminal Appeal No. 140/1999 is heard and if Court directs him to produce those ornaments. The bond is to be furnished before the trial Court.

The parties are directed to act upon the copy of this order duly authenticated by the Sheristedar/Court Stenographer of this.