

**(1988) 09 MP CK 0053**  
**In the Madhya Pradesh High Court**  
**Case No : S.A. No. 511 of 1982 (J.)**

|                  |    |            |
|------------------|----|------------|
| Kaliram Satnami  |    | APPELLANT  |
|                  | Vs |            |
| Mohardas Satnami |    | RESPONDENT |

**Date of Decision :** 28-09-1988

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 452  
Limitation Act, 1963 — Article 68, 69

**Citation :** (1989) MPJR 51

**Hon'ble Judges :** B.M. Lal, J

**Bench :** Single Bench

**Advocate :** K.P. Munshi, for the Appellant; Ravish Agarwal, Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

B.M. Lal, J.

Respondent/Plaintiff Mohardas Satnami brought an action against the Appellant/Defendant Kaliram Satnami for recovery of eight gold lurkies weighing about two totals or in lieu thereof its price Rs. 3200/-.

In short, Plaintiff's case was that on 3-2-1979 theft was committed in his house. Therefore, he lodged a report at the Police Station Patan, Tahsil Baloda Bazar, District Raipur. During investigation the said gold lurkies were seized from the possession of the Appellant Kaliram and the same were identified by Mohardas Satnami. Thereupon, the Appellant was charge-sheeted for the offence punishable u/s 354 and 380, J. P. C. After investigation, the police presented challan against the Appellant before the Judicial Magistrate First Class, Baloda Bazar on 18-4-74 and the Appellant was tried for the offence vide Criminal Case No. 1 173/77. However, his trial ended in his acquittal by order dated 16-7-79 and the trial Court while exercising the jurisdiction u/s 452 of the Code of Criminal Procedure, 1973 passed the order for the return of the said seized eight gold lurkies to the Appellant after two months from the date of passing of the

order of acquittal i. e., 16-7-79. Against the order of acquittal the State of Madhya Pradesh filed a Misc. Criminal Case for seeking leave to appeal before this Court and the Respondent Mohardas invoking the provisions of Section 454, Cr. P. C. preferred appeal against the return of eight gold lurkies to the Appellant/Defendant who was accused in the said criminal case. By order dated 16-1-80 leave to appeal was refused by this Court and the appeal preferred by the Respondent Mohardas was also withdrawn on 11-8-80, as not pressed. Appellant Kaliram, therefore, on 5-5-80 applied for return of the eight seized gold lurkies and cash Rs. 39/-. The learned Magistrate in Misc. Criminal Case No. 10 of 80 on the same day i. e., 5-5-80, directed return of the said lurkies to the Appellant Kaliram.

On these facts the Respondent Mohardas filed a suit against the Appellant Kaliram for return of the seized lurkies received by him from the Court on 8-5-80 or in the alternative to pay its price amounting to Rs. 3200/-. This suit was file on 26-9-80.

The Appellant resisted the suit on the ground inter alia that he had not committed any offence punishable within the meaning of Section 454, 380 I. P. C. He further pleaded that the seized article-8 gold lurkies belonged to him On account of third degree method meted to him by the police, he handed over the said eight lurkies to the police.

The trial Court as well as the lower Appellate Court found that the Respondent Mohardas successfully proved that the said gold lurkies seized by the police from the Appellant Kaliram, belonged to him (Mohardas) and therefore, he is entitled either for the return of the 8 gold lurkies or price Rs. 3200/- thereof. As such, the trial Court decreed the suit and the same was affirmed by the lower appellate Court against which this appeal has been filed.

While admitting the appeal this Court on 11-1-83 framed the following substantial questions of law:

- (1) Whether the claim in suit is governed by Article 68 or 69 of the Limitation Act, 1963 and whether the claim is within time ?
- (2) Whether it can be said that the cause of action for the claim in suit arose on 8-5-80 when the seized ornaments were returned to the Defendant ? and
- (3) Whether it is proved that the ornaments belonged to the Plaintiff and he is entitled to a decree for Rs. 3200/- as their price ?

Shri K. P. Munshi, learned Counsel appearing for the Appellant vehemently contended that the suit as framed and filed, was hopelessly barred by limitation. In support of his contention he submitted that in view of the provision of Article 68 of the Limitation Act, 1963 the suit should have been brought within three years from the date when the Respondent/Plaintiff first learnt in whose possession the eight lurkies were. As such he contended that on 4-2-74 when the said gold lurkies were seized from the possession of the Appellant, the

Respondent first came to know and from this date within three years, the suit ought to have been filed, i. e., on or before 3-2-77, whereas the suit was filed on 26-9-80 and as such it is hopelessly barred by limitation.

Article 68 of the Limitation Act, 1963 is reproduced below:

Description of suit.

Period of limitation

Time from which period begins to run

For specific moveable property lost, or acquired by theft or dishonest misappropriation or conversion.

Three years

When the person having the right to the possession of the property first learns in whose possession it is.

A perusal of this Article shows that it consists of three limbs viz. first, "for specific moveable property", secondly, "lost or acquired by theft" and thirdly, "dishonest misappropriation or conversion". In the instant case, we are only concerned with the second limb i. e. "lost or acquired by theft".

Shri Munshi further contended that alternatively even if it is assumed that if this Article 68 of the Limitation Act does not apply, but Article 69 applies, even then the suit is barred for which period of limitation is only three years and this period will be computed from the date when the property is wrongfully taken.

Shri Ravish Agarwal, learned Counsel appearing for the Respondent on the other hand contended that the suit is well within time, within the meaning of Article 68 of the Limitation Act.

This point is not dispute that on 4-2-74 the said eight gold lurkies were seized by the police from the Appellant and as such they were in possession of the police as criminal case property and as soon as the challan was filed, the same were kept in the custody of the Court and remained in deposit with the Nazarat. As such the gold lurkies were in custodia legis and their final disposal was made on 5-5-80 and under the Courts order, the Appellant received the same on 8-5-80. Under such circumstances, the question would be whether the limitation within the meaning of Article 68 of the Limitation Act would start with effect from 8-5-80 or from 4-2-74.

Article 68 of the Limitation Act contemplates that a suit for recovery for specified moveable property lost or acquired by theft or misappropriation or conversion be filed within three years from the date when the person having the right to the possession of the property first learns in whose possession it is No doubt, to prove that as to when the Plaintiff learns first in whose possession it is, the burden is on him to establish the same, so as to bring his case within the purview of Article 68 of the Limitation Act.

The above aspect of the case was not examined by the Courts below for the reason that no specific plea relating to limitation was raised by the Appellant and as such there was no occasion for the Courts below to decide such an issue. However, provisions of Section 3 of the Limitation Act make it obligatory even to the appellate Court to examine this point and if found that the suit is barred by limitation then to dismiss it. Therefore, there is no legal impediment to examine this point at this stage as well.

As to the date from which period of limitation begins to run under Article 68 of the Limitation Act, the words used are "first learns in whose possession it is" and these words have not a decisive meaning and to compute the period of limitation, it is to be reckoned from the point of time when the Plaintiff first learns in whose possession the property in question was.

No doubt, on 4-2-74, the eight gold lurkies were seized from the possession of the Appellant as a thief of the said lurkies and till he is exonerated of such a charge of theft, his possession of the property seized from him cannot be construed to be entitling him for possession of the same. The words "person having right to possession" have to be construed in right perspective, keeping in view the "right of possession" which is recognised by the Court in the cases of theft, i. e., the second limb of Article 68 of the Limitation Act. This right in favour of the Appellant was recognised by the Court vide order dated 16-7-79 on which date he was acquitted and order of returning 8 lurkies was passed in his favour by the Magistrate First Class directing to return the same after two months of the passing of the order i.e. on 16-9-79. Therefore, from this date, the Appellant could be said to have notional possession of the said eight gold lurkies and it is the date on which the Respondent/Plaintiff is said to have learnt relating to the possession of the said lurkies, for the first time. Thus, the period of limitation of three years would be computed from 16-9-79.

Chapter XXXIV of the Code of Criminal Procedure, 1973 deals in respect of the property involved in criminal proceedings before criminal forum. In the exercise of the provisions of Chapter XXXIV of the Code of Criminal Procedure, passing of any order by Criminal Court is of summary nature conferring no title relating to the property involved, on the person concerned and therefore, the jurisdiction of the Civil Court to adjudicate the dispute relating to the said property notwithstanding the order of the Criminal Court, is unfettered and in such cases the limitation within the meaning of Article 68 of the Limitation Act would start from the date of the last order passed by the Criminal Court under Chapter XXXIV Cr. P. C. See *Sri Premchand Kar and Anr. v. State of West Bengal and Ors.* 1963 (1) Cri. L.J. 117.

As such the suit could have been filed by the Respondent/Plaintiff within three years from the 16-9-79 from which date the Appellant became entitled to have the possession of the said eight gold lurkies by virtue of his acquittal order and return of the same by Magistrate First Class, Baloda Bazar vide his judgment dated 16-7-79 whereby the Magistrate directed to return the said lurkies to the

Appellant/Defendant after two months of the order i. e. on 16-9-79, and this is the date on which the Plaintiff Respondent is supposed to have first learnt in whose possession the said gold lurkies were. Therefore, the Respondent could have filed the suit for recovery of the said lurkies on or before 15-9-81 whereas the suit was filed on 26-9-80 which is well within time.

From the discussion above, the claim in suit is governed by Article 68 of the Limitation Act and not by Article 69 of the said Act. Thus, the suit is well within time having been filed within the period of three years from 16-9-79 and the cause of action accrued in favour of the Respondent for filing the suit on 16-9-79.

Shri Munshi then switched on his second contention that it has not been proved that the said lurkies belonged to the Respondent/Plaintiff and as such he is not entitled to a decree for their return or in lieu thereof Rs. 3200/as price.

Suffice to say that both the Courts below, after discussing the issue at length reached the conclusion that the Respondent has successfully proved that the gold lurkies belonged to him. P. W. 4 Bhakla and P. W. 1 Dhanmat Bai have been relied upon on this issue. The finding reached on this issue by the Courts below is a finding of fact and cannot be interfered with in second appeal.

No other points were pressed.

In the result, this appeal has no merit and it is hereby dismissed with costs. Counsel's fee according to schedule, if certified.