

(2017) 11 BOM CK 0115
In the Bombay High Court
Case No : 155 of 2003

Nanasaheb S/o Ramnath Nirmal

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 09-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 454](#) - Appeal against order under Section 452 or Section 453

Citation : (2017) 11 BOM CK 0115

Hon'ble Judges : T. V. Nalawade, A. M. Dhavale

Bench : DIVISION BENCH

Advocate : Uday S. Malte, S. J. Salgare

Final Decision : Allowed

Judgement

1. This is an appeal by the original informant challenging the order of crediting money seized to the Government. The appeal is filed u/s 454 of the Cr.P.C.

2. In Sessions Case No. 18/2000, eight accused persons were charged for committing dacoity and robbing PW1 Nanasaheb Nirmal/the appellant of cash of Rs. 27,468/+ 450/and other articles namely diary, bills, receipt books of the informant.

3. During the investigation, the accused were arrested. The following amounts were seized from them.

Sr. No. Accused No. & Name Amount seized in rupees

[1] Accused No. 1 - Mallu 1570/+ diary with photographs of the informant (Panchanama Exh. 80).

[2] Accused No. 2- Popat Cash of Rs. 4650/(Panchanama Exh.99)

[3] Accused No. 3 - Sanjay Cash of Rs.4050/(Panchanama Exh. 83).

[4] Accused No. 4 - Rajendra Cash of Rs.2450/(Panchanama Exh103).

[5] Accused No. 5 - Sattar Cash of Rs. 3000/(Panchanama Exh102)

[6] Accused No. 6 - Kiran --

[7] Accused No. 7 - Sameer 3200/

[8] Accused No. 8 - Baba 3200/

Total Rs. 22,120/-

4. The prosecution led evidence and PW1 Nanasaheb, who has deposed that on 27.06.2000 at about 05:00 a.m. while he was returning by his Tempo from Kopargaon to Sangamner, at Sahakar Nagar his tempo was halted and he was assaulted by four persons and threatened to be killed. Then they drove the Tempo upto Pultamba diversion. They robbed the informant of Rs. 27,468/and cash of Rs. 450/from his own pocket. One diary and bills were also taken away with the cash. He identified the diary and bills and receipts recovered along with the cash. Since the cash was not having any identification marks, it could not be identified. The Id. Addl. Sessions Judge, Kopargaon acquitted the accused on the ground of absence of identification parade. For want of identification of the cash, he directed that the cash be forfeited to the State.

5. It is relevant here to record that, all the accused have denied the seizure of cash from them and thus they have not claimed the cash. This order of forfeiture of cash is under challenge.

6. Learned advocate Mr U. S. Malte for the appellant argued that, when the accused were not claiming the cash, it should have been given to the informant.

7. Learned APP Mr Salgare argued that, the cash was not identified as stolen property and, therefore, it was forfeited to the State.

8. When the accused have disclaimed the money, the seized cash should have been handed over to the informant who was claiming the money. The forfeiture of the property to the State was wholly unjustified and unwanted.

9. In this regard, we rely on Mahesh Kumar Vs State of Rajasthan 1991 SC (Cri) 219 wherein, in the similar facts and circumstances it is observed thus:

"In the facts and circumstances of the case, we are satisfied that the direction made by the learned Single Judge of the Rajasthan High Court for the forfeiture of the amount of Rs. 20,000/(Rupees twenty thousand) to the State is wholly unwarranted. It is now accepted principle that the confessional part of the statement made by the accused leading to discovery within the meaning of Section 27 of the Evidence Act, 1872 or Section 162 of the Code of Criminal Procedure, 1973 can be made use of for the purpose of and the disposal of the property under Section 452 of the Code. The High Court as well as the courts below found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt. The accused disclaimed the stolen property and there is no reason why same should not be returned to the ownerthe

complainant, to which it belongs".

10. Thus, the appeal deserves to be allowed. Hence, the order.

ORDER

(i) The Criminal Appeal is allowed.

(ii) The order of Id. Additional Sessions Judge, Kopargaon in Sessions Case No. 18/2000 decided on 04.01.2003 to the extent of forfeiture of cash amount to the State is set aside. It is ordered that, the cash of Rs. 22,120/seized shall be delivered to the informant subject to furnishing Indemnity Bond to the satisfaction of the trial Judge. There shall be no order as to costs.