

(1991) 07 OHC CK 0057
In the Orissa High Court
Case No : Criminal Revision No. 179 of 1987

P. Madhusudan Rao

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 23-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 517
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (1992) CriLJ 1864

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : H.S. Mishra and B.P. Sarkar, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Accused No. 1 is petitioner against appellate order confirming direction to confiscation of property u/s 452, Cr. P.C.

2. Petitioner was tried for an offence Under Sections 379 and 411, IPC as a piece of precious stone was found in his possession for which he could not account for and his movement was found to be suspicious near bus stand of Sonepur. Accused took the defence that he is an Advocate from Andhra Pradesh. Coming to know that precious stones are available in Bolangir district of Orissa, he came with the precious stone as a sample. He went to Birmaharajpur in search of such stone but could not find. On return while he was moving with the other accused, he was called to police station after which he was prosecuted.

3. During trial, petitioner examined himself and proved a receipt in support of his purchase of the precious stone. Though trial court did not accept the receipt and was not satisfied about the ownership of the precious stone, petitioner was acquitted since prosecution could not prove that precious stone was a stolen property. While acquitting petitioner, trial court directed confiscation of the stone. Appellate court has confirmed it.

4. There is no dispute that precious stone in respect of which offence is alleged to have been committed is to be disposed of by the trial court in exercise of power u/s 452, Cr. P.C. In *N. Madhavan Vs. State of Kerala*, , while interpreting Section 517 of the repealed Cr. P.C. which had provisions similar to Section 452 legal position has been settled. Therein it has been observed that discretion is vested with the court to dispose of the property in any of the three modes specified in the Section. Exercise of the discretion is inherently a judicial function. Choice of mode and manner of disposal is not to be made arbitrarily but judicially in accordance with sound principles founded on reason and justice keeping in view the class and nature of the property and the material before it. One of such principle that after acquittal of the accused, court should normally restore the property to the person from whose custody it was taken if offence as alleged is either committed by the property (sic) or such offence is committed in respect of the property. It was observed :

Departure from the statutory rule of practice is not made when there is no dispute or doubt as in the instant case that the property in question was seized from custody of the accused and belonged to him.

5. Applying this principle appellate court in effect found that in spite of the fact that property was taken from custody of the petitioner, there is doubt as to whether it belonged to him.

6. Decisions of this Court have been cited where either there was rival claims in respect of the property or where there is no dispute that property belonged to accused. No decision has been cited where during trial, accused claimed the property to be his and produced materials which were not accepted.

7. I am inclined to hold that in a case where there is no rival claim and accused claiming the property to be belonging to him has not satisfactorily accounted for the same, Court should make a departure from the normal rule and without immediately on judgment of acquittal, passing an order of disposal, make further enquiry to give opportunity to accused who is acquitted and from whose custody property is taken to satisfy the Court that he is entitled to the same. Court having discretion in the matter of disposal of such property may also in proper cases leave the question open and give some time to the claimant to establish his entitlement to the property in a Civil Court. Since there is no rival claimant and State would be the beneficiary if confiscation is made, such suit is to be filed against the State Government. Confiscation being in effect escheat, forum for escheat may also be directed to be approached by the State. What steps would be taken depends upon the facts and circumstances.

8. In this case, I am inclined to hold that petitioner should be given liberty to approach appropriate Civil Court at Sonepur to examine the entitlement of the petitioner to property taken from his custody. For six months from today, confiscation of property shall remain suspended to enable petitioner to get order from the Civil Court at Sonepur to take the property to its custody from custody

of the Criminal Court. In case no order is received during the period, property in question shall be confiscated.

9. A question of jurisdiction of Subordinate Judge, Sonapur becoming the Magistrate First Class to try the accused and pass order of confiscation the property u/s 452, Cr. P.C. arises in this case. There can be no doubt that in case there is a Court of Judicial Magistrate First Class established by State Government at Sonapur other than the court of Sub-divisional Judicial Magistrate established, Subordinate Judge can be appointed as Presiding Officer of such Court. Where, however, there is no such Court, Subordinate Judge would not have jurisdiction to try the accused and pass order u/s 452, Cr. P.C. In this case, I need not examine the question since valuable right of acquittal of the petitioner would be taken away and petitioner may have to face a fresh trial.

10. In view of the aforesaid discussion, Criminal Revision is allowed to the extent indicated and order of confiscation is modified.