

(2018) 01 GUJ CK 0059
In the Gujarat High Court
Case No : 1045 of 2016

RANJITSINH BAHADURSINH JADEJA

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 09-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 227](#), [Section 452](#) - Discharge — Order for disposal of property at conclusion of trial
[Indian Penal Code, 1860](#), [Section 120](#)

Citation : (2018) 01 GUJ CK 0059

Hon'ble Judges : S.G. Shah

Bench : Single Bench

Advocate : SURAJ A SHUKLA, MANAN MEHTA

Judgement

1. Heard learned advocate Mr.Suraj A. Shukla for the applicant and learned APP Mr.Manan Mehta for the respondent State. Perused the record.

2. The petitioner herein has challenged the judgment and order dated 24.07.2015 regarding muddamal article while disposing the Criminal Case

No.4250 of 2013 whereby original accused were acquitted from the charges under Sections 404, 406, 409, 417, 114 and 120 (B) of the Indian

Penal Code. By such order, practically the Trial Court has confirmed the order dated 05.02.2016 in Criminal Misc. Application No.531 of 2015

in Criminal Case No.4250 of 2013 whereby application for muddamal by the present petitioner was rejected. It is pertinent to note that petitioner

herein has challenged such order by filing Criminal Revision Application No.15 of 2016 before the Sessions Court at Bhavnagar where by

judgment and order dated 22.08.2016 the Sessions Court has, while rejecting the revision, confirmed the order dated 05.02.2016 in Criminal

Misc. Application No.531 of 2015.

3. If we peruse the impugned judgments and application by the petitioner to get muddamal, initially we must make it clear that muddamal article is

though alleged to be an article for which there is allegation regarding commission of offence of forgery, it is practically registered sale-deed no.55

of 2013 dated 05.01.2013 for agricultural land bearing Revenue Survey No.421 paiki 3 sim of village Bhadrod in Mahuva Taluka of Bhavnagar

District so also registered the sale deed no.1380 of 2013 dated 26.04.2013 for the agricultural land bearing Revenue Survey No.421 paiki 2 sim

of village Bhadrol in Mahuva Taluka of Bhavnagar District. It is the case of the petitioner herein that such agricultural fields are in his possession

and he is cultivating and he was witness in the criminal case since such documents are recovered from him during the investigation. It is further

contended that he has deposed before the Criminal Court at Exh.93 during the trial and produced the aforesaid documents at Exh.65 and 66 on

24.07.2015. It is further contended that it being original documents he is in need of it at several occasions for different official works. Otherwise

also being owner of the land after purchasing the land, as bonafide purchaser for value certainly petitioner is in need of the original documents

which generally needs to rest at his disposal and therefore, it is his right for claiming back such documents once, its contents are proved on record.

Therefore, when such documents are lying unutilized and remained in custody of the criminal court for no valid reason, petitioner has claimed its custody.

4. However, when such application was heard on merits, by order dated 05.02.2016 the Trial Court has observed that since muddamal cannot be

disposed of till revision period is over, it cannot be returned back to the petitioner. However, Trial Court has failed to realize that judgment of

acquittal is dated 24.07.2015 and therefore, on 05.02.2016 period of limitation for filing appeal or revision is certainly over. Moreover, if any

appeal is filed then, it should have been disclosed by the prosecuting agency and therefore, when there is a possibility that documents under

reference may be torn by passage of time because of improper handling and not safeguarding of the same by the court staff and more particularly,

when criminal case is over wherein accused were acquitted and when present

petitioner is not accused but a witness from whose possession the documents were produced, there is no reason to refuse to hand over documents under reference to the petitioner.

5. However, Trial Court has, in paragraph no.3 of the order, observed that HDFC Bank has objected to handover the documents to the witness claiming that they are going to initiate appropriate civil proceedings and they have already challenged the order of acquittal before the Sessions Court by filing Criminal Misc. Application No.65 of 2016 to condone the delay in challenging such order. However, in absence of any order by the Competent Court, there is no reason for the trial Court to deny handing over the documents to the person from whose custody it was produced on record, more particularly, when there is no order by Trial Court to call for the record and proceedings till date. In addition to such position, the Trial Court has referred the provisions of Section 227 (1) (a) probably it was improper disclosure because Section 227 of the Criminal Procedure Code does not deal with disposal of the property whereas provisions is made in Chapter XXXIV of the Code. Whereby though there is a provisions under Section 452 of Criminal Procedure Code to dispose of the property on conclusion of Trial, the Trial Court has failed to exercise its jurisdiction and therefore, there is reason to interfere with the impugned order. Similarly, the Sessions Court has appreciated the settled legal position as discussed hereinabove, observing that when application to condone the delay is filed, appeal would remain pending till such application is allowed and therefore, muddamal cannot be returned back to the petitioner. On perusal of legal database from the e-court website, it has been noticed that Criminal Case No.65 of 2016 to condone the delay in challenging the judgment of acquittal is allowed by condoning the delay and thereby, appeal would be pending before the Sessions Court. Database also confirms that on condonation of delay, Criminal Case No.77 of 2017 has been registered and it is pending before the 4th Additional Sessions Judge at Bhavnagar, next date of hearing is shown as 23.01.2018. If it is so, there is no irregularity or illegality in the impugned order when both the courts below have refused to handover muddamal article to the petitioner. In view of above facts and circumstances, now, it would be open for the petitioner to approach the concerned

Sessions Court in Criminal Appeal No.77 of 2017 with similar request because it would be only for the competent court to decide that whether the

Court requires the original documents for deciding the appeal or not. To that extent, it is made clear that impugned order so also present order

would not come in way of the petitioner to seek appropriate relief from the concerned Sessions Court and concerned Sessions Court shall do the

needful in accordance with law without being influenced by the present and all such orders.

6. It is also made clear that while disposing the muddamal article, concerned Court shall rely upon available material on record so also applicable

law and guidelines issued by the Hon"ble Supreme Court of India in the case of Sunderbhai Ambalal Desai V. State of Gujarat reported in (2002)

10 SCC 283, wherein it is made clear that how muddamal article should be dealt with by the Courts.

7. In view of above facts and circumstances, this Criminal Revision Application is disposed of with above observations.