
(2018) 11 BOM CK 0097

In the Bombay High Court

Case No : Criminal Writ Petition No.3705 Of 2017

Sikandar Alias Shaikhlal Lalasaheb Deshinge

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 82, 85(2), 85(3)

Citation : (2018) 11 BOM CK 0097

Hon'ble Judges : B. P. Dharmadhikari J;Sarang V. Kotwal, J

Bench : Division Bench

Advocate : Megha S.Bajoria, K.S. Patil, A.S. Pai

Final Decision : Disposed Off

Judgement

B. P. Dharmadhikari, J

1.Â Looking to the nature of controversy we issue Rule and make it returnable forthwith. Heard learned Counsel for Petitioner and learned APP

finally by consent. Learned APP is seeking time to find out the fate of acquittal order and to obtain instructions. However, we find it not necessary.

2.Â After hearing respective Counsel, we find that order of proclamation u/s 82 of Code of Criminal Procedure was issued against the Petitioner on

16/07/1990 when the warrant of arrest was returned without execution, as he could not be found. Thereafter in due course as per order dated

17/08/1990, the learned Judicial Magistrate issued an order for attaching his property. That order was executed on 15/10/1990.

3.Â It appears that thereafter Petitioner appeared in 2012 and the Sessions Court Sangli proceeded further with trial in Sessions Case No.204/05. By

Judgment dated 04/02/2012 accused Nos.1 and 2 have been acquitted of offence punishable u/s 452, 342, 394, 366, 323 and 506 r/w 34 of the Indian

Penal Code. Petitioner/accused No.1 has also been acquitted of the offence punishable u/s 376 of IPC.

4.Â Petitioner as on 23/01/2014 moved an Application in the Court of J.M.F.C. Jat for releasing the property in his possession. That Court as on

12/03/2014 found that the Application was not filed within stipulated period as per section 85(3) of Cr.P.C. and therefore it was disposed of. It

appears that he had on 10/03/2014 moved an Application for condonation of delay and with identical order said application was also disposed of.

5.Â Learned Counsel for Petitioner submits that in fact after Petitioner appeared in Sessions Case and faced the trial, the order of attachment did not

survive. It is further contended that in any case after judgment of acquittal delivered on 04/02/2012, the attachment could not have continued. She

claims that acquittal has become final.

6.Â Learned APP submits that if there be any Appeal against such acquittal, attachment may be required to be continued for securing presence of

Petitioner. It is further pointed out that reason given by trial Court is valid and there is no jurisdictional error.

7.Â Perusal of provision of section 85(3) of Cr.P.C. shows that person who seeks release of property from attachment, has to apply within two years

and point out to the trial Court that property was attached without serving proper notice upon him and he was not absconding or did not conceal

himself for the purpose of avoiding execution of warrant. The provision of section 85(3) of Cr.P.C. also contemplates that if trial Court is so satisfied,

the property can be delivered to Petitioner after recovery of costs incurred by Government in consequence of attachment. If the property is already

sold, the proportionate proceeds thereof can be made over to Applicant.

8.Â Here Petitioner has also filed before the Court an 7/12 extract dated 28/09/2015 and it mentions ownership or possession of State Government

only.

9.Â Learned APP has also invited attention to provision of section 85(2) which stipulates that failure of Petitioner to appear within specified time

after proclamation, results in keeping the property under attachment at the disposal of State Government. She submits that after following procedure in

subÂ? section (2) State Government can dispose of that property.

10.Â In the present matter, the Petitioner No.1 has appeared before Sessions

Court, faced trial and has been acquitted in 2012. It appears that even thereafter and till date, 7/12 extract mentioned supra, property has not been sold by State Government. In this situation, the question is whether the property can be restored back to Petitioner. Judgment of Hon'ble Apex Court in (2008) 5 BOM CR (S.C.)441, Vimalben Ajitbhai Patel vs. Vatslabeen Ashokbhai Patel and Ors., shows that attachment under Section 82 of Cr.P.C. is only for securing attendance of absconding accused. Here the accused appeared and participated in trial. Judgment dated 04/02/2012 of Sessions Court, Sangli, in Sessions Case No.204/05 clearly shows that Petitioner has been honourarily acquitted.

11.Â The provision looked into by us, supra, show that Petitioner for that purpose has to demonstrate that the attachment was unwarranted, as he did not have notice of proceedings and he was not absconding. The application preferred by Petitioner before trial Court for restoration of possession back to him, does not show any such statement or explanation. Because of acquittal, he has moved the Application. He appeared in proceedings almost after 12 years. He pleaded herein that he was working at other place and earning livelihood. It is also stated that he was implicated in false case. The learned Court of J.M.F.C. in this situation could not have taken cognizance thereof and could not have released the property in his favour.

12.Â However, considering the acquittal, as property is still with State Government and lying unutilized, we grant Petitioner leave to make appropriate application to State Government. If such Application is moved within three months from today, giving the necessary explanation to Respondent/State Government, then the State Government shall verify relevant facts and take suitable decision upon it within further period of six months. Observation of Sessions Court in Judgment of acquittal show that Petitioner was falsely implicated in that case.

13.Â With these directions and keeping all other contentions of the parties open in relation thereto, we dispose of the present Writ Petition.