

(2018) 02 CHH CK 0067

Chhattisgarh High Court

Case No: Criminal Appeal (CRA) No. 478 Of 2017

Arun Kumar Swarnkar

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision: Feb. 2, 2018

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 451, 452

Hon'ble Judges: Pritinker Diwaker, J; Sanjay Agrawal, J

Bench: Division Bench

Advocate: Anurag Dayal Shrivastava, Vivek Sharma

Final Decision: Disposed Of

Judgement

Pritinker Diwaker, J

1. The appellant is the proprietor of Ruchi Jewelers situated at Baramkela, District Raigarh where according to the report lodged by him dacoity of ornaments worth 40-50 Lakhs apart from some cash, was committed on 18.02.2012.

2. As informed, during trial the appellant had filed an application under Section 451 of the Code of Criminal Procedure (for short ""Code""") before the

Court below for interim custody of the ornaments subjected to dacoity, which however came to be rejected by it. Said rejection order was assailed by

the appellant before this Court but during pendency of Cr.M.P No. 1140/2014, final judgment was passed and therefore on 2.8.2016 the said petition

(Cr.M.P No. 1140/2014) was dismissed as withdrawn reserving liberty to the appellant to pursue his application before the trial Court. Application

filed by the appellant before the trial Court under Section 452 of the Code was withdrawn on 16.2.2017 as by that time the final judgment was

already passed by the Sessions Judge on 30.9.2014 and in paragraph No. 126 of the said judgment a finding has been recorded by the trial Court that

order in respect of disposal of the seized property can only be passed after the judgment in respect of the absconding accused is passed. It is this

finding which has been assailed by the appellant before this Court.

3. Counsel for the appellant submits that he is a businessman in whose shop dacoity was committed and the ornaments worth Rs. 40-50 Lakhs have

been seized and therefore he is entitled to receive the custody of those ornaments. He further submits that as the case of appellant has not been

considered on merit including ownership and possession of the ornaments, trial Court may be directed to consider afresh the application to be filed by

the appellant under Section 452 of the Code for releasing the property in question in his favour ignoring the finding recorded by the Court below in

paragraph No. 126 of the judgment dated 30.9.2014. He further submits that the appellant cannot be made to wait for an indefinite period to get his

own property because if the absconding accused persons are not arrested, he would unnecessarily be prohibited from receiving his property.

4. State counsel submits that he has no objection if the matter is remanded to the trial Court and the appellant is permitted to file a fresh application for releasing his property.

He further submits that the trial Court may be directed to go through the entire record, ascertain as to which property was subjected to dacoity and

which property has been seized and then considering the entitlement of the appellant, it may be directed to decide the said application.

5. Thus considering the facts and circumstances of the case in particular the fact that by another order we have also decided the appeals preferred by

the accused persons, finding recorded by the Court below in paragraph No. 126 of its judgement is set aside. Appellant is permitted to file a fresh

application under Section 452 of the Code of Criminal Procedure for disposal of the property subjected to dacoity. Needless to say that in the event of

filling any application by the appellant herein, the trial Court will decide the same as early as possible after considering all aspects of the case, in accordance with law.

6. With the aforesaid observation and direction, the appeal is disposed of.