

Syed Ahmed Hussain Vs The State of Maharashtra

Court: Bombay High Court (Aurangabad Bench)

Date of Decision: Jan. 18, 2013

Acts Referred: Evidence Act, 1872 â€” Section 27
Penal Code, 1860 (IPC) â€” Section 411

Citation: (2013) ALLMR(Cri) 1284

Hon'ble Judges: P.V. Hardas, J

Bench: Single Bench

Advocate: S.G. Chincholkar, for the Appellant; S.K. Tambe, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

P.V. Hardas, J.

This Criminal Revision Application has been filed challenging the order passed by the Judicial Magistrate, First Class,

Dharmabad, dated 20.12.2008, rejecting an application filed by the applicant seeking his discharge. The principal ground, on which the applicant

had sought his discharge, was that the property which is recovered from the possession of the applicant does not tally with the description of the

stolen property in the First Information Report. The Magistrate rejected the application filed by the applicant on the ground that it was a matter of

appreciation of evidence and could not be gone into at that stage.

2. Mrs. Chincholkar, learned counsel for the applicant has urged before me that the applicant is more than 75 years of age and is diabetic. The

description of the property, which is recovered from the possession of the applicant, does not tally with the description of the property as given in

the First Information Report. It is, therefore, urged before me that prima facie, no offence punishable u/s 411 of the Indian Penal Code is

disclosed. The learned A.P.P. has supported the findings arrived at by the trial court.

3. The property which was found in the possession of the applicant was recovered pursuant to the disclosure memorandum of the other accused

u/s 27 of the Evidence Act. The seizure memo in respect of the property is a general description of the property which is seized from the applicant;

while the First Information Report dealing with the description of the property uses technical language in the description of the property which is

stolen. Prima facie, at this stage, therefore, it cannot be urged that there is total variance in respect of the description of the property which was

stolen and the property which was recovered from the possession of the accused. The identification of the property as stolen property is a matter

of appreciation of evidence and the identification can only be done at the trial when the complainant steps into witness box. Prima facie, at this

stage it cannot be held that no offence is disclosed against the applicant on the basis of which the applicant is entitled for discharge. The trial has

been stayed for practically about four years, and therefore, while rejecting this application, the Trial Court is directed to ensure that the trial is

concluded as expeditiously as possible. Criminal Revision Application is accordingly dismissed.