ABC 2016 (II) 419 GUJ
ACQUITTAL & BAIL CASES

a

HIGH COURT OF GUJARAT

(S.G. Shah, J.)
Criminal Revision Application No. 279 of 2005
Decided on 16 September, 2016

b ***SONI ASHWINKUMAR LALJIBHAI*** ***- Appellant(s).***

Versus

STATE OF GUJARAT & ANR. ***- Respondent(s).***

c ***Law Covered:- Code of Criminal Procedure, 1973 — Section 452 —Disposal of Case property after conclusion of trial — Acquittal of accused — some of the accused absconding —case property not recovered from accused —but recovered from petitioner, i.e. goldsmith — Held, such valuable muddamal would certainly be useful to him for his business and livelihood — property handed over to petitioner. (Para 2)***

d ***Facts:-*** *The petitioner challenged the judgment and order rendered by the Ld. Addl. Sessions Judge, whereby both the accused available for trial were acquitted. However, the Sessions Court recorded that some of the accused were absconding and did not pass any order regarding muddamal and refused give it to the present petitioner, who was goldsmith and from whom muddamal was recovered during investigation.*

e *It was observed by the Honourable High Court that when there is no accused available, even after couple of decades, for trial, there is no reason to keep the valuable muddamal in the custody. It was further observed that when it is seized from the goldsmith, who is no-where concerned with the crime, such valuable muddamal would certainly useful to him for his business and livelihood. Muddamal article was ordered to be returned to the present petitioner by imposing conditions.*

f ***Law of relief:- Only because some accused are absconding, there is no reason to keep the valuable muddamal in the custody.***

g ***Held:-*** It is undisputed fact that the muddamal was gold ingots and, therefore, not in the form of original golden ornaments, which were alleged to be stolen by the accused, who are already acquitted or other accused who are yet to be charge-sheeted. It is also undisputed fact that the muddamal is not recovered from the accused but it was recovered from the goldsmith on the say of the accused that they have passed on the stolen article to the petitioner -

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goldsmith and in turn, he had converted into ingots. Therefore, the fact remains that now when there is no accused available even after couple of decades for trial as observed by the Sessions Judge while acquitting the available accused, there is no reason to keep the valuable muddamal in the custody of either the Court or investigating agency since such valuable muddamal would not yield anything either to the Court or investigating agency. Whereas, when it is seized from the goldsmith, who is no-where concerned with the crime, such valuable muddamal would certainly useful to him for his business and livelihood. (Para 2)

Counsel:- ***For Appellant(s):*** *Mr J.V. Japee, Advocate.*

For Respondent(s): *Mr A.M. Parekh, Advocate & Mr K.P. Raval, APP.*

Cases Referred:-

Soni Chimanlal Jethalal v. State of Gujarat reported in 1993 [2] GLH 1060. (Para 3)

JUDGMENT

S.G. SHAH, J.: - Heard Ld. Advocate Mr. Japee for the petitioner and Mr. Raval, Ld. APP for the respondent no. 1.

2. The petitioner has challenged the judgment and order dated 24/2/2005 rendered in Criminal Misc. Application No. 798/2004 by the Ld. Addl. Sessions Judge. Such application was filed with reference to the Sessions Case No. 44/1999, which was decided on 16/12/1999, whereby both the accused available for trial at the relevant time, have been acquitted declaring them innocent from the charges levelled against them. However, while acquitting both the accused, the Sessions Court has recorded in last paragraph of the judgment that some of the accused are absconding as disclosed in column no. 2 of the charge-sheet and, therefore, the Court is not passing any order so far as muddamal is concerned. Therefore, when Criminal Misc. Application No. 798/2004 was decided by the order dated 24/2/2005, the Ld. Sessions Judge has observed that when some of the accused are yet to be charge-sheeted, muddamal cannot be given to the present petitioner, who is goldsmith and from whom muddamal was recovered during investigation.

It is undisputed fact that the muddamal was gold ingots and, therefore, not in the form of original golden ornaments, which were alleged to be stolen by the accused, who are already acquitted or

other accused who are yet to be charge-sheeted. It is also undisputed fact that the muddamal is not recovered from the accused but it was recovered from the goldsmith on the say of the accused that they have passed on the stolen article to the petitioner - goldsmith and in turn, he had converted into ingots. Therefore, the fact remains that now when there is no accused available even after couple of decades for trial as observed by the Sessions Judge while acquitting the available accused, there is no reason to keep the valuable muddamal in the custody of either the Court or investigating agency since such valuable muddamal would not yield anything either to the Court or investigating agency. Whereas, when it is seized from the goldsmith, who is no-where concerned with the crime, such valuable muddamal would certainly useful to him for his business and livelihood.

3. Ld. Advocate Mr. Japee for the petitioner is relying upon a judgment rendered in the case of ***Soni Chimanlal Jethalal v. State of Gujarat reported in 1993 [2] GLH 1060***, wherein Ld. Single Judge of this Court has, while considering the similar situation, observed that barring certain exceptions, when trial results in acquittal, muddamal must be returned to the person from whom it was recovered. It is further held that when there is no evidence to prove that gold ingots recovered from goldsmith was made out of ornaments stolen from the complainant, then muddamal article can be returned to the goldsmith and not the complainant. It is also evident that the complainant has never prayed for getting muddamal from the Court and though the complainant is joined as respondent herein, learned advocate for the complainant could not make out any case in favour of the complainant to prove that muddamal - gold ingots are made out of the same gold ornaments which were alleged to be stolen from the complainant by the accused.

4. In any case, there is no allegation against the present petitioner either regarding commission of offence as alleged in the charge- sheet or even of abetment of main accused by converting golden ornaments into ingots. Therefore, so far as possession of muddamal article is concerned, now after couple of decades, there is no reason to keep the muddamal article in the custody of either the Court or the investigating agency. It is categorically observed and held by the Hon'ble Supreme Court in the decision rendered in the case of Sunderbhai Ambalal Desai v. State of Gujarat reported in AIR 2003 SC 638, that even if material on record is alleged to be the material which was recovered as alleged article of theft, robbery or

dacoity, even then it is to be handed over to the concerned person after drawing detailed and proper panchnama of such articles and taking photographs of such articles and on accepting bond from the person that such articles would be produced, if required, at the time of trial and against proper security. It is observed that such article is to be handed over to the complainant, the fact remains that it was situation in that case where muddamal is required to be handed over to the complainant; otherwise ratio of the case as confirmed in para 11 of the decision, would be applicable to the present case also.

5. In view of the above, revision application is allowed, whereby muddamal article lying with the trial Court shall be returned to the present petitioner on following conditions :

I The petitioner shall furnish bond/ security of Rs.1,00,000/- [Rupees one lac only] before the trial Court with an undertaking that as and when and if so required, he will produce the muddamal article before the trial Court.

II The trial Court shall hand over muddamal article after drawing detailed panchnama and taking photographs as confirmed in the judgment of Sunderbhai Ambalal Desai [supra].

Revision application is allowed accordingly. Rule is made absolute to the aforesaid extent.

***Result*:-** Revision application allowed.

ABC 2016 (II) 422 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(S.G. Shah, J.)

Criminal Revision Application No. 446 of 2007
Decided on 22 September, 2016

KISHENBHAI MOHANBHAI DODIA(DODEJA) ***- Appellant(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered*:-** ***Bombay Prohibition Act —Section 67(1)A(1) —Mumbai Spirituous Preparations [Interstate Trade And Commerce] Control Act, 1957— Sealed bottles of UD Cologne —Recovery of — Held, only because of disclosing the percentage of alcohol on a sealed