

R.C.C. No. 49/09.
State Vs.Sanjay

ORDER BELOW EXH.06

1. The petition has been filed by the original complainant Shenphad Bhaurao Nevar for releasing gold in melted form weighing 4 Tola 5 Grams under Sec. 451 of the Cr.PC. According to the petitioner he has previously filed M.A. No.272/08 for releasing the property, however, that application was rejected by the Court by holding that at that time charge sheet was yet to be filed and under such circumstances that application was not maintainable. Therefore, again the petitioner has filed this application for releasing the property i.e. gold of 4 Tola 5 grams seized in melted form under Crime No.129/08. It is contention of the petitioner that in the night of 7-11-2008 in between 1.00 to 2.00 am accused entered into his home by braking the door and they have stolen away gold ornaments i.e. Ganthan, bangles, Zumber, cash amount of Rs.40,000/- and two mobile handsets. It is further contention of the petitioner that during

the investigation it is revealed that accused Sanjay has sold the gold ornaments to the goldsmith Sunil Bhavan of village Lonar. It is further contention of the petitioner that goldsmith Sunil Bhavan has admitted that accused has sold him above mentioned gold ornaments in the form of melted gold. Said gold in melted form is in the custody of police which was seized by the police under panchanama.

2. The petitioner further contended that gold in melted form is worth of Rs.54,000/- and the petitioner is entitled for the custody of the same. The petitioner lastly prayed that application be allowed and seized property i.e. gold in melted form be handed over to him.

3. Police Inspector Shri Savle has filed his say at Exh.10 and stated that he has no objection to hand over the gold in melted form i.e. 5 Gola 5 Grams to the petitioner.

Learned APP filed his say and stated that goldsmith Sunil Bhavan in his statement dated 18-3-09 stated that he has identified the accused . He has melted the gold from the ornaments received from the accused. The learned APP has no objection to hand over seized

property in the custody of the petitioner.

4. Heard learned advocate for the petitioner. According to him gold in melted form seized by Bhokardan police in crime no.129/08 is owned by the petitioner and said melted gold is prepared from the gold ornaments which were stolen from the house of the accused. He further submitted that nobody has claimed the seized property in crime no.129/08. The petitioner is owner of the seized property and as such he is entitled for the custody of gold in melted form which is seized in crime no.129/08 of Bhokardan PS. In support of his argument learned advocate Shri Sonune placed before me one citation of Hon'ble Bombay High Court reported in 2008(3) B.Cr.C.125, Ashok Patil.Vs. State of Maharashtra. , Wherein Hon'ble High Court held that- Disposal of property- Not only articles which are in original shape but articles which are converted into different form also can be returned to rightful owner.

5. In support of his contention the petitioner has filed verified copies of receipts at Exh.12/1 to 12/5. On perusal of receipts at

Exh.12/1 to 12/5 it reveals that petitioner has purchased gold ornaments from “ Shrikrishna Jewellers , Bhokardan. The petitioner has contended that said gold in melted form which is seized under Crime no.129/08 is made from the gold ornaments which were stolen from his house.

6. In the present case nobody have claimed the property except the petitioner. The receipt at Exh.12/1 to 12/5 show that petitioner has purchased the gold from “ Shrikrishna Jewellers, Bhokardan ”. The goldsmith Sunil Bhavan in his statement dated 18-3-2009 stated that he has received gold ornaments from Sanjay Bhosle who is accused in the case. He has melted the gold articles as per say if accused. Statement of witness Sunil Bhavan show that he has melted the gold ornaments which was stolen by accused Sanjay Bhosale. Therefore, it reveals that gold in melted form which is seized under Crime no.129/08 is converted from the stolen gold articles of the petitioner. As per receipts (Exh.12/1 to 12/5) petitioner appears to be rightful owner and he is entitled to the custody of the gold in melted

form. Further, police have no objection to hand over custody of the seized gold article in crime no.129/08. In my opinion, as the petitioner is rightful owner of the seized property therefore he is entitled to retain custody of seized gold. It is my further opinion that gold in melted form will be better condition with the petitioner than the police. Therefore, subject to imposition of certain conditions seized gold can be given to the petitioner. Hence, I proceed to pass the following order.

ORDER

- a) Application is allowed.
- b) Police Inspector, Bhokardan PS is hereby directed to handover the gold which is seized in crime No.129/08 under Sec. 395, 457, 34 of IPC to the petitioner after his executing bond and Supratnama of Rs.90,000/-.
- c) P.I. PS Bhokardan is further directed that he shall carry out detail panchanama of the seized gold. He is further directed that he shall carry out panchanama in respect of purity and weight of seized gold.

- d) P.I. PS Bhokardan is directed to take photographs of the four corner of the gold article.
- e) The applicant shall not convert the gold into other form or article without prior permission of the Court or Court of Sessions.
- f) The applicant shall produced the seized gold as and when called by this Court or Hon'ble Sessions Court.
- g) The applicant shall not dispose of the gold in any manner or create charge in respect gold with anybody till final disposal of case in Crime no.129/08 of PS Bhokardan.
- h) The amount of Supratmant shall be confiscated to the Govt. in case of breach of any of the conditions.

Sd/- 22.3.10

(A.B.Jadhav)

Judicial Magistrate (FC)

Bhokardan

Date : 22-03-2010 }