

Naresh Vs. State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Jan-23-2013

Judge : M.L. Tahaliyani

Appeal No. : Criminal Application (Apl) No.42 of 2013

Appellant : Naresh

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

Heard learned Counsel Mr. R.M. Daga for the applicant and learned Additional Public Prosecutor Mr. S.M. Bhagde for the non-applicant/State.

2. Admit. Heard finally by consent of learned counsel for the parties.

3. The applicant feels aggrieved by the order passed by the learned Judicial Magistrate First Class, Court No.5, Nagpur on 15th December, 2012 on Exh.1 in Misc. Criminal Application No.1841/2012. The learned Magistrate has directed return of seized gold ornaments and gold nugget weighing 2659 gram and 730 miligram to the original applicant on execution of personal bond of Rs.78,00,000/- and bonds of two sureties in the sum of Rs.50,00,000/- each.

4. The applicant was the original complainant and he claims to be the owner of the property. The property recovered by the police is the stolen property recovered during the course of investigation of Crime No.184/2012. Naresh Nemichand Kothari-the applicant herein was the complainant in the said case and it was alleged that there was theft of gold ornaments from his shop. The suspected person was one of the employees of the complainant. Therefore, offence under Section 381 of the Indian Penal Code was registered and was investigated. The property has been recovered during the course of said investigation.

5. It is submitted by learned Counsel Mr. R.M. Daga that the order is onerous inasmuch as the applicant has been directed to execute bonds of two sureties in the sum of Rs.50,00,000/- each despite the fact that the property belongs to the applicant. The non-applicant does not dispute that the property should be returned to the applicant.

6. After having gone through the facts of the case and after hearing both the sides and particularly considering the fact that the applicant is permanent resident of Nagpur and is having his business place at Nagpur, it was not necessary for the learned Magistrate to ask for sureties for return of property belonging to the applicant/complainant, particularly when the conditions have been imposed to ensure production of property. Hence, the order passed by the learned Magistrate on 15th December, 2012, as far as para No.2 of the said order is concerned, is modified as under:

"2. The gold ornaments and gold nugget weighing 2659 gram and 730 miligram valued at about Rs.78,00,000/- shall be returned to the applicant by the Police Inspector of Panchpaoli Police Station, Nagpur on execution of his personal bond of Rs.78,00,000/- with the conditions mentioned in para No.3."

The application accordingly stands disposed of.

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