

**Ashok Kumar Vs. the State of Kerala, Rep. by the Public Prosecutor**

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**Court :** Kerala

**Decided On :** Sep-12-2012

**Reported in :** 2012(4)ILR(Ker)236; 2012(4)KLJ220

**Judge :** S.S. Satheesachandran

**Appeal No. :** Crl.MC. No. 2086 of 2012 (A)

**Appellant :** Ashok Kumar

**Respondent :** The State of Kerala, Rep. by the Public Prosecutor

**Judgement :**

S.S. Satheesachandran, J.

1. Petitioner is the de facto complainant in a crime case registered at Kondotty Police Station.

2. After house breaking in night valuable properties including gold ornaments were stolen from his house, was the case for registration of the crime. Investigation of that crime led to indictment of three accused persons for offences punishable under Section 457, 380 and 461 of the Indian Penal Code. When the trial proceeded one among the accused (A3) remained at large. While the trial proceeded against A1 and A2, presence of A1 could not be secured since he was severely indisposed of, though he was in jail. Case against A1 and A3 were split up, and proceeded against A2 alone which led to the acquittal of that accused.

Subsequently trial proceeded against A1 and it led to his conviction for the offences. Split up case against the remaining accused, A3, renumbered as C.C.No.1210/2011 is still awaiting disposal as the presence of that accused who is the sole accused in that split up case, is yet to be secured.

3. Petitioner/de facto complainant moved an application for release of interim custody of the valuables stolen, some of which were recovered and produced before the court. Gold ornaments worth 15 sovereigns had been stolen in the house breaking, apart from a camera and other valuable items, was his case. During investigation three gold ingots which are stated to have been made out of the gold ornaments stolen and also the camera were seized, and produced before the court. Petitioner moved for release of those items, the gold ingots, marked as MO 1 series, and camera, marked as MO3, during the trial against the accused (A1 and A2) previously completed by the court. Learned magistrate allowed the release of camera on condition of execution of a bond for Rs.5,000/- (Rupees Five Thousand Only) and also its production as and when directed. So far as the release of the gold ingots, the request was turned down holding that item is necessary for evidence in the trial of the accused (A3) and also for the reason that the petitioner has not stated the purpose for which release of that item was applied for. Annexure A is that order. The above petition has been filed impeaching the correctness of Annexure A order seeking issue of direction to the magistrate to release the gold ingots seized in the case.

4. Learned Public Prosecutor submits that the accused in C.C.No.1210/2011 originally ranked as A3, still, remains at large. The gold ingots produced in the case, originally marked as MO 1 series, are necessary for the evidence to be tendered in the split up case against A3, is the further submission to oppose the petition.

5. Theft involved in the case after house breaking took place a decade ago. Trial against one among the accused remains to be completed cannot be taken as a ground to deprive the de facto complainant possession of articles stolen if he is otherwise entitled to. Postponement of interim custody of articles produced by the trial court till final decision of the case, which may take a long time, is an

erroneous exercise of judicial discretion. The real owner or person entitled to possession of property should not suffer further injury when for not of his fault, property belonging to him got entangled in a crime perpetrated by some other person. If he is forced to wait indefinitely to get possession of such property involved in the crime, till the completion of trial, then it would be a case of vexing and harassing him, and more so causing him further irredeemable injury. When a court is called upon to pass interim orders for disposal of any property involved in a crime, that too where such property has considerable value it cannot be oblivious of the stark reality that the person entitled to possession and deprived of such property will be put to serious hardship and irreparable injury if such property is retained till conclusion of the trial against the accused persons. Where gold ornaments are stolen after house breaking, on its recovery, either in that form or converted, the person who is deprived of such gold ornaments and entitled to its possession on interim custody can legitimately ask the court to do so. It is too harsh and, in fact, improper to ask him to wait indefinitely for release of such property till the trial of the case is over, which as already mentioned, takes its own time. Where several accused are involved in a crime and case against one or more of the accused is split up since his presence could not be secured, as in the present case, completion of the trial in the split up case against such absconding accused is unpredictable. In such a case it is incumbent upon the trial court which is called upon to pass orders for interim custody of the property involved in the crime, to take a pragmatic view on the request made for release of the property on interim custody. Any request thereof has to be appreciated, having regard to the plight of the person who is shown to be entitled to the possession of the property seized, but, safeguarding the evidence to be let in the case and also the valuable rights of the accused person proceeded against.

6. The definite case of the prosecution is that gold ingots produced as MO 1 series in the case are made out of gold ornaments pilfered from the house of the de facto complainant. When that be so, the petitioner/de facto complainant is not expected to state for what personal purpose he is seeking release of those articles from the court. The apex court in *Sunderbhai Ambalal Desai V. State of Gujarat* [2003 (2) KLT 1089 (SC)] has given certain directions/guidelines for disposal of property involved in criminal case pending trial. It has been emphasized that an owner of

the article should not suffer for the reason that his property is in one way or other connected with the crime. If he is entitled to the possession of the property imposing adequate conditions pending trial such articles can be released to him. In paragraph 12 of the above decision the apex court has held thus:

"For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security."

7. When such guidelines have been given with respect to release of property connected with the crime, especially, where they are shown to be stolen there cannot be a deviation except where special circumstances are involved. No such special case has been made out in the facts presented. For the time being, if so found necessary the magistrate can impose a direction for retention of the gold ingots in its present form without any modification for a prescribed period. The fact that the trial is delayed indefinitely cannot be a ground to deprive the possession of the gold ingots converted from the ornaments stolen from the house of the petitioner. He can be certainly directed to furnish security for release of the gold ingots, and also undertaking, but, fixing a period as found reasonable, to produce the same before the court. Direction to produce the items cannot continue for an indefinite period, solely depending upon the securing of the presence of the accused person. What is the period to be prescribed for such retention on release of the gold ingots is a matter to be taken note of, and appropriate orders to be passed thereof by the Magistrate having regard to the totality of the facts and circumstances presented in the case. No doubt, panchnama of the article has to be prepared apart from taking photographs, to tender them in evidence. Annexure A order passed by the magistrate declining the release of the gold ingots is set aside, and the magistrate is directed to pass fresh orders over the request made

by the complainant for release of the gold ingots, taking note of the observations made above, and also the guidelines given by the apex court. Needless to point out release of the articles if ordered shall be subject to conditions as indicated above.

Crl.M.C. is disposed of.

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