REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 170 OF 2009

BHARAT SANCHAR NIGAM LIMITED **Appellant(s)**

VERSUS

SURYANARAYANAN & ANR. **Respondent(s)**

JUDGMENT

Dr. Dhananjaya Y. Chandrachud, J.

A First Information Report was lodged on 4 February 1992 alleging that a theft of 10,285 kilograms of copper wires and 62 lead sleeves of a value of Rs. 8,31,300/- had taken place from the godown of the erstwhile Telecom Department at Gandhi Nagar in Ernakulam. The accused had allegedly sold the material to the first respondent. The first respondent is the proprietor of an entity by the name of Surya Metals.

On 21 February 1992, the Circle Inspector of Police, Ernakulam Police Station seized 5,060 kgs of copper lead alloy moulds from the first respondent.

By an order dated 21 February 1992, interim custody of the seized alloy moulds was handed over by the Magistrate to the appellant in pursuance of the provisions of Section 451 of the Code of Criminal Procedure, 1973 ("CrPC").

Pursuant to the investigation, Criminal case No. 433 of

1993 was registered on the file of the Judicial Magistrate First Class, Ernakulam for offences punishable under Sections 457, 381, 461, 462 and 411 read with Section 34 of the Indian Penal Code, 1860. The first respondent was cited as a witness (CW-10).

By a judgment and order dated 30 April 1999, the Trial Court acquitted all the four accused of the offences with which they were charged. After the acquittal, the first respondent filed an application, being Criminal Miscellaneous Petition No. 5076 of 1999 (in C.C. No. 433/1999) on the file of the JMFC under Section 452 of the CrPC seeking release of the alloy moulds.

The judgment of acquittal was assailed by the State in Criminal Appeal No. 730 of 1999. The application for release of the property filed by the first respondent was kept in abeyance. On 19 January 2006, the appeal filed by the State against the order of acquittal was dismissed.

The application filed by the first respondent for release of the seized material was disposed of by the Judicial Magistrate on 31 August 2006. The Magistrate held that though interim custody was given to the appellant (the de-facto complainant) on 22 February 1992, the first respondent filed an application under Section 452 only on 21 June 1999. While declining to grant custody of the seized material, the trial court relegated the first respondent to prove its title before a competent civil court. By a judgment dated 13 March 2007 the Sessions Court affirmed the finding of the learned Magistrate

and held that the first respondent had neither made a claim in respect of the seized goods until 1999, nor was there any clinching evidence to indicate that the material belonged to it. Hence, the direction that it was for the first respondent to assert its title and prove it before the civil court was confirmed. The first respondent assailed the above order of the Sessions Court in a criminal revision before the High Court.

By its judgment dated 21 February 2008, the High Court reversed the decision of the Sessions Court and held that the appellant had not raised a claim over the seized articles. The High Court held that since possession of the goods was taken over from the first respondent when they were seized, it should be restored to the first respondent in view of the decision of this Court in *N. Madhavan Vs. State of Kerala*[1]. The High Court held that though interim custody was handed over to the appellant, it did not assert any right over the property, nor did it deny the right or title of the first respondent and hence, there was no reason to relegate the first respondent to a civil court. The Judicial Magistrate was directed to take steps to hand over the property to the first respondent.

Leave was granted in these proceedings on 27 January 2009. The order of the High Court was stayed during the pendency of these proceedings.

Learned counsel appearing on behalf of the appellant submits that the Magistrate had carefully evaluated the facts

1 **[(1979) 4 SCC 1]**

of the case and had noticed that it was the consistent case of BSNL, through its witness PW-3, who was the Divisional Engineer (Telecom) that it had suffered a theft of the material obtained from the General Manager (Stores), Calcutta. Moreover, the material was of a nature which could not be purchased from the open market. The officers of the Telecom Department, PWs 1, 2, 4 and 5 had identified the material as the stolen goods. Learned counsel submitted that until the disposal of the criminal case, no steps were taken by the first respondent to assert its alleged claim of title. On the contrary, possession of the goods was handed over to BSNL on 21 February 1992.

Insofar as the decision of this Court in Madhavan (supra) is concerned, it has been submitted that the principle that the goods should be restored to the person from whom they have been seized is a principle which is ordinarily applied. However, the title of the original owner from whose custody the theft occurred cannot be set at naught by restoring possession in a case where the person from whose custody the goods have been seized does not have title. Learned counsel submitted that, BSNL was not a party to any of the proceedings including those which culminated in the impugned order of the High Court.

On the other hand, learned counsel appearing on behalf of the respondent submitted that the principle of law which has been laid down in the judgment in Madhavan (supra) is clearly indicative of the governing position in law. Learned counsel also relied upon the decision of a three Judge Bench of this

Court in *Pushkar Singh* vs. *State of Madhya Bharat & Ors.*[2] in which it was held that upon the acquittal of the accused, money seized from the accused and belonging to him must be returned to the accused and not to the complainant. In the circumstances, it was submitted that the view of the High Court is consistent with the position in law and no interference is warranted in the appeal.

Section 451 of the CrPC forms part of Chapter XXXIV of the CrPC, which deals with the disposal of property. Section 451 provides as follows:-

> **"451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.**
>
> **Explanation.- For the purposes of this section," property" includes-**
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> **(a) property of any kind or document which is produced before the Court or which is in its custody,**
>
> **(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."**

Section 451 empowers the court before which the property is produced during an inquiry or trial to make such order as it

2 **AIR 1953 SC 508**

thinks fit or for its proper custody pending the disposal of the inquiry or trial. Section 452 provides for the disposal of the property at the conclusion of the trial.

Sub-sections(1) and (2) of Section 452 provide as follows:-

> **"452. Order for disposal of property at conclusion of trial.**
>
> **(1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitle to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.**
>
> **(2) An order may be made under sub- section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision."**

In terms of sub-section (1) of Section 452, when an inquiry or trial before a criminal court has been concluded, the court is empowered to pass an appropriate order for its disposal by destruction, confiscation or delivery to any person claiming to be entitled to the possession thereof or otherwise. Entitlement postulates a right. The function which the Court exercises under Section 452 is of a judicial nature. In making that order, the court must undoubtedly have due regard to the entitlement claimed by the person who seeks the possession of

the property.

We are unable to subscribe to the submission which has been urged on behalf of the first respondent that when it makes an order under Section 452, the court is merely required to determine the source from which the property was seized. Indeed, if this construction were to be placed, it would mean that the right of a person who claims title to the property would be subordinate to the claim of a person from whose possession the property was seized. A claim of title to the goods which have been seized is a relevant consideration while passing an order under Section 452. Where there are conflicting claims of entitlement to the property, the Magistrate may deal with them or, where it is found that the rival claims need to be resolved after an evidentiary trial, relegate the conflicting claimants to prove their rights and entitlements before a competent court.

Indeed this is the basis of the decision of this Court in Madhavan (supra). In that case, the accused was charged for an offence under Section 302 IPC for shooting a person dead with a licensed gun. He was acquitted of the charge of having committed the offence on the ground that he had exercised his right of self-defence. Yet the trial court had confiscated the weapon to the government. This Court set aside the judgment of the High Court which had upheld the view taken by the Sessions Court. The principle which has been laid down by this Court is as follows:-

"The words "may make such order as it thinks

> **fit" in the section, vest the court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with the sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt – as in the instant case – that the property in question was seized from the custody of such accused and belonged to him."**

The above observations indicate that the authority which is entrusted to the Court under Section 452 of the CrPC (equivalent to Section 517 of the Code of 1898) is judicial in nature. As a judicial power, it has to be exercised for valid reasons keeping in view the class and nature of the property and the material before the Court. Normally the Court would, following the discharge or acquittal of the accused, restore the property to the person from whose custody it was taken. A departure from this rule of practice is not lightly made when there is no dispute or doubt that the property which was seized from the custody of the accused belongs to him. These observations in the decision of this Court in Madhavan (supra) clearly indicate that ordinarily the person from whom the property was seized would be entitled to an order under Section 452, when there is no dispute or doubt that the property

belongs to him. It is only when the property belongs to the person from whom it was seized that such an order can be passed.

Where a claim is made before the court that the property does not belong to the person from whom it was seized, Section 452 does not mandate that its custody should be handed over to the person from whose possession it was seized, overriding the claim of genuine title which is asserted on behalf of a third party. It must be noted that in Madhavan case (supra), there was no dispute that the weapon of offence belonged to the accused from whom it had been seized.

The decision in Pushkar Singh (supra) involved prosecution for offences under Sections 449 and 372 of the Gwalior Penal Code. The Magistrate held that no case was established against the accused and the money which was recovered from his house belonged to him. There was a specific finding that the money did not belong to the complainant. The Sessions Judge dismissed the revision by the complainant. The High Court was moved for the return of the amount to the complainant and not to the accused, which application was allowed. This Court held that in view of the clear finding of fact by the Magistrate to the effect that no offence was committed in respect of the sum of money and that it did not belong to the complainant, followed by the acquittal of the accused, the amount recovered had to be delivered to the accused. Hence, the view of this Court was that following the acquittal of the accused and since there was a specific finding

that the money belonged to him, an order for return of the money to the complainant could not be countenanced .

Learned counsel appearing on behalf of the first respondent, however, submits that in the present case, the appellant did not move an application under Section 452 and hence an order cannot be passed in terms of that provision for the restoration of legal possession to the appellant. The issue before the Court, however, is somewhat different. The basic issue is whether the first respondent who moved an application for the release of the seized property to him under Section 452 has established a claim of entitlement.

Prima facie, at this stage, we are unable to find any reasonable basis in the record for handing over custody of the seized goods to the respondent. During the course of the hearing, we requested learned counsel appearing on behalf of the first respondent to indicate at least, prima facie, some basis for the claim of title in the acquisition of the goods or the payment which has been made for acquiring them. As we note from the judgment of the trial court, the claimant had produced certain invoices between 8 February and 20 February 1992, recovery having been effected on 21 February 1992. The Magistrate noted that no cash receipts were produced by the first respondent and though vouchers were produced by CW-10, they did not prove that they were for the purchase of the seized goods. Nothing at all has been shown in response to our query.

In our view, the claim which has been made by the first

respondent to the title to the goods is seriously in dispute. Hence it was but appropriate and proper that such a claim be agitated before the competent civil forum. The view of the Magistrate was correct. In the absence of such an adjudication, the custody of the goods, which have been seized, should continue to be with the appellant. In passing this order, we are also guided by the fact that as noticed in the order of the Magistrate, the appellant had indicated through its evidence that the goods were stolen from its godown and were of a nature which were not capable of being acquired from the open market.

The High Court was in error in directing return of the goods to the first respondent. The first respondent must, in our view, be relegated to the civil court for establishing its claim and title to the goods as observed in the order passed by the Magistrate, which was affirmed by the Sessions court.

The goods were made over to the appellant as far back as on 21 February 1992. Nearly 26 years have elapsed since then. We see no reason or justification to require the appellant to hold these goods in its custody indefinitely thereby occupying valuable space and leaving productive resources unutilised. The appellant shall preserve a sample of the goods in question, should it be required for adjudication before the competent civil court. Subject to this, we grant permission to the appellant to sell the goods by auction and to maintain an account of the money which has been realised from the sale.

The amount which is realised by the appellant, shall

abide by such directions as may be passed by the competent civil court in the suit which may be instituted by the first respondent.

The criminal appeal is, accordingly, disposed of.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(M.R. SHAH)

NEW DELHI,
December 13, 2018

ITEM NO.102 COURT NO.12 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 170/2009

BHARAT SANCHAR NIGAM LIMITED Appellant(s)

VERSUS

SURYANARAYANAN & ANR. Respondent(s)

Date : 13-12-2018 This appeal was called on for hearing today.

CORAM :
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s)
Mr. R.D. Agarwal, Adv.
Mr. Pavan Kumar, AOR

For Respondent(s)
Mr. G. Prakash, AOR
Mr. Jishnu M.L., Adv.
Mrs. Priyanka Prakash, Adv.
Mrs. Beena Prakash, Adv.

Mr. Sreegesh M.K., Adv.
Mr. K. R. Sasiprabhu, AOR

UPON hearing the counsel the Court made the following
O R D E R

The criminal appeal is disposed of in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI) (SAROJ KUMARI GAUR)
COURT MASTER (SH) BRANCH OFFICER
(Signed reportable judgment is placed on the file)