

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO(S).383/2017

RAM NARESH PRASAD

APPELLANT(S)

VERSUS

THE STATE OF JHARKHAND & ORS.

RESPONDENT(S)

O R D E R

1. Heard learned counsel for the parties.
2. This case has chequered history.
3. The judicial journey started way back in the year 1996, attains finality by this order.
4. A case was registered in Crime No.20/1996 under Sections 457 and 380 of the Indian Penal Code, 1860 (for short, the 'IPC') on 25.02.1996. The First Final Form was submitted by the Investigating Agency which in turn was accepted by the Learned Judicial Magistrate by its order dated 04.01.1997. However, an arrest was made on 12.01.1997 of 4 accused persons, pursuant to which a Supplementary Final Form against 4 accused persons was filed on 12.03.1997 under Sections 380, 411, 414 and 457 of the IPC.
5. During the pendency of the trial of these 4 accused persons, an application was filed by the

Investigating Agency invoking Section 319 of the Code of Criminal Procedure, 1973 (for short, Cr.P.C.) on the basis of evidence adduced by the accused persons to prosecute the appellant. The said application was dismissed and thus attained finality. All the four accused persons were convicted by the judgment dated 27.01.1999. It has been informed at the Bar that the said conviction has been confirmed by the Appellate Court.

6. A Final Form No.2/1999 was submitted before the learned Chief Judicial Magistrate by the Investigating Agency exonerating the appellant. It was accordingly accepted on 22.05.1999.

7. The respondent no.2 before us, a practicing advocate, who was neither the complainant nor having connection with the alleged offence filed a revision petition the Learned Sessions Judge in Criminal Revision No.53/2001 challenging the order of the learned Chief Judicial Magistrate accepting the Final Form. The aforesaid revision filed in Criminal Revision No.53/2001 was allowed by the Sessions Judge which order is reproduced hereunder:

"3. Learned lawyer for the applicant has submitted that the learned C.J.M. accepted the Final Form submitted against OP No.2 in which police submitted Final Report accusation false without considering the evidence available in the case diary.

4. Learned P.P. has conceded that the impugned order does not show that the C.J.M., considered the statements of the witnesses recorded u/s 161 Cr.P.C. in the Case Diary.

5. Perused the impugned order. It does not show that the case diary was even perused before passing the impugned order. Therefore, the impugned order is not legal and cannot be sustained. Therefore, the revision is allowed. Learned CJM is directed to hear the informant or APP, peruse diary both original and supplementary and pass order in accordance with law."

8. The said order as recorded does not indicate as to whether the appellant was put on notice and heard, though it is the case of the appellant himself that he was put on notice. Suffice it to state that the mandate of Section 398 of the Cr.P.C. has not been complied with inasmuch as the appellant has not been heard perhaps there is a reason why the objections filed by him have not been taken note of.

9. Thereafter, the learned Chief Judicial Magistrate proceeded to issue summons by taking cognizance against the appellant for offence punishable under Sections 413 and 414 of the IPC. Aggrieved, a revision was filed by him which was dismissed by the Court of Sessions as confirmed by the High Court.

10. In the special leave petition filed by the appellant in SLP (Crl.) No.3358 of 2006 dated

28.07.2006, an order of remittal was made to the High Court to consider the specific questions raised. By the impugned order, the High Court reiterated the alleged stand and hence, the present appeal is before us.

11.As rightly contended by learned counsel for the appellant, there is absolutely no material to implicate him except the statement of the co-accused. The specific case if any, against appellant is that he has received the stolen goods. In the case on hand, the idols stolen were recovered though it is contended by Respondent no.2 that the two of the five idols subsequently recovered are not genuine. This is a matter which has to be decided by the learned Chief Judicial Magistrate on the application filed by the informant/complainant. The application filed by the Investigating Agency invoking Section 319 of the Cr.P.C., as stated has attained finality. There was nothing left for the investigating agency to proceed further thereafter. That was the reason why the investigation was closed by way of a final form.

12.We are not able to sustain the impugned order on two grounds:

(I) Firstly, there is absolutely no material to implicate the appellant and that too with

the sole aid of the Case Diary which cannot be termed as an evidence *per se*.

(ii) Secondly, the revisional order passed by the Sessions Court cannot be sustained in the eye of law as it has not been passed in compliance of Sections 397 to 399 read with 401 of the Cr.P.C.

13. When an order enures to the benefit of an accused, a subsequent judicial order setting aside the earlier one has to contain reasons which will include any objection raised by the accused person.

14. Therefore, looking from any perspective, we are not able to sustain the order impugned, particularly, when the FIR was filed as early as in the year 1996 and continuing the trial against the appellant would be travesty of justice.

15. For the foregoing reasons, the appeal stands allowed. The impugned order passed by the High Court is set aside. We make it clear that the application filed by the informant for the release of the seized two idols has to be considered by the learned Chief Judicial Magistrate on its own merits and in accordance with law, preferably within a period of three months.

16. While doing so the learned Chief Judicial Magistrate is at liberty to conduct an enquiry as to whether the recovered idols are genuine or not.

17. Pending applications, if any, stand disposed of.

.....J.
(M.M. SUNDRESH)

.....J.
(J.B. PARDIWALA)

NEW DELHI;
24th August, 2023.

ITEM NO.101

COURT NO.14

SECTION II-A

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). 383/2017

RAM NARESH PRASAD

Appellant(s)

VERSUS

THE STATE OF JHARKHAND & ORS.

Respondent(s)

([PART-HEARD BY : HON'BLE M.M. SUNDRESH AND HON'BLE J.B. PARDIWALA, JJ.] [TOP OF THE BOARD])

Date: 24-08-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) Mr. Sunil Kumar, Sr. Adv.
Mr. Atul Kumar, AOR
Mr. Subodh Kumar, Adv.
Mr. Sweety Singh, Adv.
Mr. Rahul P., Adv.

For Respondent(s) Mr. Tapesh Kumar Singh, A.A.G.
Mr. Aditya Pratap Singh, Adv.
Mr. Prashant Bhardwaj, Adv.
Mr. Akshaya Kumar Singh, Adv.

Respondent-in-person

Mr. Rajesh Prasad Singh, AOR

Mr. Vimlesh Shukla, Sr. Adv, Sr. Adv.
Mr. Himanshu Shekhar, AOR
Mr. Parth Shekhar, Adv.
Ms. Ambali Vedasen, Adv.
Mr. Shubham Singh, Adv.
Ms. Monica Haseja, Adv.
Ms. Rachna Ranjan, Adv.
Mr. N Chandra Sekar, Adv.
Ms. Sarita Kumari, Adv.

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

The appeal stands allowed in terms of the signed order which is placed on the file.

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

(KAVITA PAHUJA)
COURT MASTER (SH)

(RAM SUBHAG SINGH)
COURT MASTER (NSH)