Supreme Court of India
Madanraj vs Jalamchand Lodha And Anr. on 27 January, 1959
Equivalent citations: AIR 1960 SC 744, 1960 CriLJ 1151
Author: Gajendragadkar
Bench: P Gajendragadkar, A Sarkar, K S Rao
JUDGMENT Gajendragadkar, J.

1. This appeal by special leave is directed against the order passed by the High Court of Madras by which the order of acquittal passed in favour of the appellant by the trial magistrate has been set aside and the proceedings have been remitted to the court below for disposal in accordance with, law. The appellant is a pawn-broker of Ambattur near Madras. He had a Katha account with the complainant Jalamchand Lodha under which on November 3, 1956, he owed him Rs. 15,000; as security for the said sum and in accordance with the custom obtaining in Katha transactions the appellant had placed gold and silver, jewels valued at about Rs. 15,000 in a locked box kept with the said complainant, the key of the lock remaining with the appellant. The case against the appellant was that he visited the complainant's house between November 3, 1956 and April 9, 1957 for transacting business with him when he opened the locked box and took away a large number of gold and silver jewels. On April 9, 1957, the complainant discovered that the appellant had removed from the said box jewels and silver articles worth Rs. 14,000 without his knowledge or consent. On these facts alleged by the complainant a charge-sheet was submitted against the appellant under Section 380 of the Indian Penal Code.

2. At the trial the complainant gave evidence in support of his case and relied upon two documents executed by the appellant, the promissory note for Rs. 15,745 (Ex. P-l) (3-11-1956) and the agreement (Ex. P-2) (9-4-1957). In the latter document the appellant had admitted that for the amount of Rs. 15,745 due by him to the complainant the appellant's jewels box had been kept with the complainant and that out of the said box jewels or the value of Rs. 14,000 had been taken away by the appellant without the complainant's knowledge. The appellant promised to bring the jewels back from his house and put them in the box by April 15, 1957, but he failed to keep his promise.

3. The appellant contended before the trial magistrate that these documents had been executed by him under coercion, threat and undue influence practised on him by the complainant. The learned magistrate rejected this contention and found that the appellant had in fact removed the valuables from the box and had voluntarily promised to restore them by April 15, 1957. He, however, held that, in the circumstances of the case, the jewels and other valuables in question could not be said to have been in the possession of the complainant within the meaning of Section 378 of the Indian Penal Code. That is why he took the view that the offence of theft had not been proved against the appellant and so he acquitted him of the said offence.

4. This order of acquittal was challenged by the complainant by his revisional application before the High Court of Madras. The High Court took the view that the conclusion of the magistrate as to the requirements of Section 378 of the Code was unsustainable having regard to the facts which the learned magistrate had himself found. Indeed the High Court was disposed to characterise the said conclusion as perverse. In the result the High Court held that, in the interests of justice, the order of

acquittal should be set aside and the case should be sent back for disposal in accordance with law in the light of the observations made by the High Court in its judgment. It is against this order that the present appeal has been filed.

5. At the hearing of this appeal Mr. Mani, for the appellant, sought to challenge the competence of the revisional application filed by the complainant under Section 439 of the Criminal Procedure Code. He contended that the present proceedings are governed by the Code as amended in 1955 and he argued that Section 439 (5) of the Code expressly prohibits any proceedings by way of revision in cases where an appeal lies and no appeal has been brought. According to Mr. Mani, the complainant had a right to apply to the High Court for special leave to appeal against the order of acquittal under Section 417, Sub-section (3) of the Code and since he has not exercised the said right it was not open to him to move the High Court in its revisional jurisdiction under Section 439 of the Code. When we enquired whether this point had been raised before the High Court we were told by the learned advocates appearing for the complainant and the State that no such contention had been raised be fore the High Court. If this contention had been raised before the High Court, it would have considered it on the merits and it might have, if necessary, allowed the complainant to convert his application for revision filed under Section 439 into an application for special leave under Section 417(3). In the circumstances of this case we do not think we should allow Mr. Mani to raise this point for the first time in his appeal under Article 136.

6. Then Mr. Mani contended that the High Court was in error in coming to the conclusion that prima facie the essential ingredients of Section 378 had been proved in this case. According to him, the jewels and other ornaments were kept in the box which remained with the complainant as a notional security and that it was always open to the appellant to take out the ornaments from the said box as he liked. He also suggested that the document (Ex. P-2) on which reliance was placed against him in the courts below had been executed by the appellant under coercion and undue influence. We do not think the appellant is entitled to raise these contentions at this stage in the present appeal. All that the High Court has done is to direct that the case should be tried afresh. In its very nature the order of remand passed by the High Court does not finally decide the points in the case and it is essentially of an interlocutory character. We do not propose to express any opinion On the observations made by the High Court because we are anxious that the further trial of the case should not be prejudiced one way or the other by whatever we may say. This Court does not generally interfere with interlocutory orders under Article 136, and we see no reason to depart from the usual practice in the present case. If the appellant wants to urge any grounds against the prosecution case either On law or on facts, it would be open to him to raise them at the trial before the court which will take up this case. We wish to express no opinion on the said points.

7. Mr. Mani then invited our attention to the fact that on February 10, 1958, the complainant has filed a suit (Civil Suit No. 41 of 1958) on the promissory note in question; and he suggested that all further proceedings in the criminal case remanded by the High Court should be stayed pending the disposal of the civil suit. On the other hand it has been urged before us by the respondents that, even if the complainant does not get a decree for the full amount claimed by him in the plaint, that would not affect the merits of his complaint in the criminal case. On this point again we propose to express no opinion. It would be open to the appellant, if so advised, to take proper steps to apply for a stay of

criminal proceedings and if such an application is made by him we have no doubt that it would be dealt with in accordance with law.

8. In the result the appeal fails and is dismissed.