

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

CRIMINAL WRIT PETITION NO. 874 OF 2016

Ayyuboddin s/o Hamiddin
@ Haffizuddin

...Petitioner

VERSUS

Manoj s/o Subhash Jadhav
and another

...Respondents

.....

Shri S.R.Choukidar, advocate for petitioner
Shri S.V.Natu, advocate for respondent no.1
Shri N.T.Bhagat, A.P.P. for respondent no.2

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CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

Heard the learned counsel for the
respective parties.

2. An application under Section 456 of the
Code of Criminal Procedure came to be moved by the
respondent/complainant alleging that the gold
chain of 20 grams, as was seized in the crime in
question be given on supratnama. The said

application came to be allowed by the learned Magistrate vide order dated 16.3.2016, which was further confirmed in the Revision which was preferred at the behest of the present petitioner.

3. While questioning the order passed under Section 457 of the Code of Criminal Procedure, Shri Choukidar, learned counsel for the petitioner would urge that looking to the profession of the petitioner and the fact that there exists civil dispute between the parties, the Court below should have refrained from exercising powers under Section 457 of the Code of Criminal Procedure. According to him, once the custody of the gold chain is handed over to the complainant, the same will have direct bearing over the merits of the trial. According to him, the article should have been kept in the safe custody of the Court. As such, he submits that the application needs to be allowed.

4. While resisting the claim, learned counsel for respondent no.1 Shri Natu would urge that, apart from the issue of maintainability of the

petition against the interlocutory order passed by the learned Magistrate, both the Courts below have concurrently held against the petitioner and the arrangement, as is ordered, is at the conclusion of the trial. If it is found during the trial that the present petitioner is innocent, the custody would be handed over to him.

5. Having considered the rival contentions raised by the learned counsel for the respective parties, it is required to be noted that the effect of the order passed by the learned Magistrate under Section 457 of the Code of Criminal Procedure is only till the conclusion of trial and the order does not decide any right between the parties qua the entitlement of permanent custody/possession of the chain in question which is the subject matter of the crime in question.

6. Apart from above, once both the Courts below have concurrently held against the petitioner, in extra ordinary jurisdiction, this Court hardly notices any legal issue so as to

cause interference. It is worth to observe that the order passed by the Magistrate in exercise of the powers under Section 457 of the Code of Criminal Procedure shall hardly have any impact on the order passed in Revision Application.

7. With the above observations, the present Petition is dismissed.

(N.W.SAMBRE, J.)

dbm/crwp874.16