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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No.242 OF 2015

Tabassum Danish Shaikh ..Applicant.

Vs

The State of Maharashtra & Ors. ..Respondents.

Mr Rizwan Merchant i/by Swapnil Wagh for the applicant.

Mr Deepak Thakare, APP for the Respondent-State.

Mr Niranjana Mundargi a/with J.J.Bardeskar for the Respondent No.2.

Mr Kamlesh Jain for the Respondent No.3.

CORAM : A.S.GADKARI, J.

DATE : 13th April, 2016

P.C.

- 1) Heard the learned counsel for the respective parties.
- 2) This is an application for return of the property seized by the police under section 27 of the Evidence Act from the respondent No.3 during the course of investigation of CR No. 187/2014 dated 4.8.2014 registered with Bangurnagar Police Station under sections 406, 420 read with section 34 of the IPC. The record discloses that after completion of investigation the police have filed charge-sheet against the respondents No. 2 and 3 under sections 420, 406, 411 read with section 34 of the IPC and it is culminated in C.R./C.C.No.186/2014.

3) The applicant is the original complainant and as per the FIR and the investigation carried by the police in CR No. 187/2014, the jewelry, which is being sought to be returned, belongs to the applicant. The applicant, therefore, filed an application dated 25.9.2014 for return of the said jewelry before the learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai bearing Notice No. 1262/N/2014. The applicant also filed an affidavit in support of her application. The respondent Nos. 2 and 3 opposed the application. The learned trial Court by its order dated 5.1.2015 rejected the said application.

4) The record discloses that, to the application filed by the applicant bearing Notice No. 1262/N/2014, the police filed their say/report dated 8.10.2014 and have inter-alia stated that the investigating agency does not have any objection to return the seized ornaments in the said crime to the applicant herein. The police have also stated that the bills of purchase of said ornaments be verified and indemnity bond may also be directed to be taken from the applicant.

5) It is to be noted here that the ornaments which have been recovered from the respondent no.3 are weighing 743 grams and valued at Rs.15,38,140/-as per the police report. The police have stated that they have no objection for returning the property to the applicant as stated earlier. Though the respondents No. 2 and 3 have opposed the application and claimed the said property, they will have to establish their respective claims during the trial and the trial Court after recording evidence will pass appropriate orders in that behalf.

6) In view of the above, I am inclined to allow the present application on the following terms;

(a) The Senior PI, Bangurnagar Police Station is hereby directed to return the gold ornaments seized / recovered from the respondent no.3 during the course of investigation of CR No. 187/2014 on her furnishing Affidavit and Indemnity bond that, the applicant shall produce the said ornaments at the time of trial of CR No. 187/2014 before the concerned Court in the same form without effecting any change, modification or alteration in its shape and form, at the time of trial if so ordered or necessary. In addition to the said indemnity bond, the applicant is hereby also directed to furnish a PR bond of Rs.16 lakhs till the conclusion of trial.

7) The Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)