

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION (APL) NO.596 OF 2013**

Smt.Jayaben Kirtikumar Shah

..Applicant

V/s.

Neha Shah & Ors.

..Respondents

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Mr.A.H.H. Ponda for the applicant.

Mr.Sanjog Parab I/by Mr.Sulbha Rane for Respondent No.1

Smt.P.P. Shinde, APP for Respondent-State.

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**CORAM : A. S. GADKARI, J.**

**DATE : 08<sup>th</sup> JULY 2016**

**P.C.**

1. By the present application under Section 482 of Cr.P.C. the applicant-original accused no.3 has questioned the correctness of the order dated 06-03-2013 passed by the Additional Chief Metropolitan Magistrate, 08<sup>th</sup> Court Esplanade, Mumbai in application no.3/N/2004 and 23/N/2004 in C.C. No.120/PW/2004 arising out of C.R. No.239 of 2003 registered with Marine Drive Police Station, Mumbai under Sections 498A and 406 read with Section 34 of the Indian Penal Code.

2. By the said order dated 06-03-2013 the Trial Court has directed that the ornaments which is the property involved in

the said crime be returned to the original complainant Smt.Neha Shah and also to the applicant. The Office of the Additional Chief Metropolitan Magistrate, 08<sup>th</sup> Court, Esplanade, Mumbai has communicated the said order to the Senior Inspector of Police Marine Drive Police Station, Mumbai by communication dated 13-03-2013 which is annexed at page no. 173 of the present application. The relevant portion from the said Order/ Communication i.e. para nos.2 and 4 is reproduced here for the sake of brevity.

*“2. St.P.I. of Marine Drive Police Station is hereby directed to return the seized property under two Panchnamas dtd.21/11/2003 and 22/11/2003 and list of properties mentioned in the FIR vide C.R.No.239/2003 in para No.3 of the application dated 12/01/2004 to the applicant Smt.Neha Shah”.*

*4. Sr.P.I. of Marine Drive Police Station is directed to return the rest of the property to Smt.Jayaben Shah.”*

3. Heard the learned counsel for the respective parties and also perused the record annexed to the present application.

4. Mr.Ponda the learned counsel appearing for the applicant submitted that in the First Information Report dated

18-04-2003, the respondent no.1 i.e. the original complainant has mentioned 39 items as her stridhan. That in the first panchnama dated 21-11-2003, 37 items were seized from the house of the applicant. He submitted that there is another panchnama dated 22-11-2003 thereby effecting seizure of other seven items/ornaments from the bank locker of the applicant. He submitted that thus the total number of articles which are seized is 44. He submitted that the respondent no.1 filed an application before the Trial Court for return of property as contemplated under Section 451 of Cr.P.C. bearing no.3/N/2004. That in the said application the respondent has mentioned and claimed custody of only 24 items pending trial. He further submitted that the applicant herein also filed an application for return of property as contemplated under Section 451 of Cr.P.C. bearing notice no.23/N/2004 before the Trial Court. That the Trial Court by the impugned order dated 06-03-2013 has directed to return the seized property under two separate panchnamas dated 21-11-2003 and 22-11-2003 to the applicant Neha Shah and as mentioned in para no.4 of the said order has also directed to return the rest of the property to Smt.Jayaben Shah i.e. the applicant. Mr.Ponda submitted that as a matter of fact the

applicant is entitled for much more number of articles than stated in the application. He further submitted that the impugned order dated 06-03-2013 and in particular para Nos.2 and 4 (reproduced herein above) are ambiguous in nature which has created the confusion while returning the property involved in the crime during the pendency of the trial and it is also because of the same, his client, though was entitled for certain number of ornaments, till date could not get custody of a single ornaments.

5. Mr.Parab the learned counsel appearing for the respondent no.1 fairly conceded to the fact that the para nos.2 and 4 of the impugned order dated 06-03-2013 which are at page no.173 of the present application are ambiguous in nature and has led to the confusion while returning the property.

6. After the Trial Court passed the order dated 06-03-2013 which was communicated to the concerned police on 13-03-2013, the respondent no.1 has accepted the custody of the ornaments by executing an indemnity bond dated 11-03-2013. The list of said ornaments is mentioned in the said indemnity bond. By the said indemnity bond the respondent no.1 has undertaken to produce the said ornaments and articles mentioned in the said indemnity bond at the time of trial. The record further

discloses that the respondent no.1/informant has also filed an application below Exh.34 dated 20<sup>th</sup> September 2013 before the Trial Court contending that in view of the judgment of the Supreme Court in the case of Sunderbhai Ambalal Deasi and C.M. Mudaliar V/s. State of Gujarat reported in Judgments Today 2002(10)SC 80, she may be permitted to produce the photographs of the ornaments and the custody of the said ornaments may be allowed to be retained by her during the pendency of the trial. As the respondent no.1 has executed indemnity bond dated 11-03-2013 while accepting the property from the custody of the Court, she is “custodia legis” and it is obligatory for her to produce the said ornaments at the time of trial.

7. Mr.Parab learned counsel appearing for the applicant on instructions submitted that the evidence of the complainant (PW No.1) is in progress and his client will withdraw the said application filed below Exh.34 dated 20<sup>th</sup> September 2013 from the record of the Trial Court on the next date of hearing without any demur.

8. As both the learned counsel appearing for respective parties agree on the fact that there is ambiguity in the order

dated 06-03-2013 passed by the learned Trial Court with respect to exact number of articles/ornaments to be returned to respective parties and its nature, the said impugned order dated 06-03-2013 is hereby quashed and set aside.

9. It is informed to this Court that the trial is in progress. The offence is of year 2003. In the circumstances the Metropolitan Magistrate seized of C.C.No.120/PW/2004 arising out of CR No.239 of 2003 registered with Marine Drive Police Station is hereby directed to expedite the trial and to make an endeavor to conclude the same on or before 31-12-2016. The parties herein are directed to cooperate in conducting the said Trial. It is needless to mention that in pursuance of the indemnity bond executed by Respondent No.1, she will produce the said articles/ornaments before the Trial Court as per the provisions of law. The Trial Court thereafter shall pass appropriate orders in that behalf for its custody during the pendency of the trial. It is further needless to mention that all the contentions of the respective parties are kept open.

10. The application is disposed off in the aforesaid terms.

**(A.S. GADKARI, J.)**