

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2877 OF 2014

Nazar Abbas Sayed		Petitioner
V/s.		
Amreen Fatima Nazar Abbas Sayed & Ors.		Respondents

Mr. Nitin Gangal for the Petitioner.

Ms. Sarah Kapadia for Respondent No.1.

Mrs. S.V. Gajare, A.P.P., for Respondent
No.5-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH JANUARY 2016.

P.C. :

1. This Writ Petition is preferred under Section 482 Cr.P.C. challenging the concurrent order of the Trial Court and the Revisional Court of handing over to Respondent No.1 interim custody of gold and other ornaments, which were seized by Mumbra Police Station, Dist. Thane, in connection with C.R. No.839 of 2013. Petitioner is the father-in-law of Respondent No.1. On the basis of the report lodged by Respondent No.1 on 1st November 2013, C.R. No.839 of 2013 was registered against the Petitioner and other Accused for the offences punishable under Sections 498-A, 406, 354, 323, 504 and 506 r/w. 34 of IPC. During the course of

investigation, about 15 gold ornaments and articles were recovered from the possession of the Petitioner. Respondent No.1 then filed Miscellaneous Application No.1309 of 2013 seeking interim custody of those seized articles on the ground that they belong to her, as these articles and ornaments are her Stri-Dhan.

2. This application was resisted by the present Petitioner contending, inter-alia, that during pendency of the trial, custody of the gold ornaments and articles should not be handed over to Respondent No.1. It was further submitted that there was no proper description of the ornaments in the application and, thirdly, it was urged that the seized jewellery belong to the mother-in-law of Respondent No.1 and not to Respondent No.1.

3. After hearing learned counsel for both the parties and on perusal of the bills, which were produced by Respondent No.1, regarding purchase of these gold ornaments, the Trial Court was pleased to hold that the interim custody of the gold ornaments and articles can be safely handed over to Respondent No.1, subject to certain conditions, and, accordingly, the Trial Court was pleased to allow the Miscellaneous Application No.1309 of 2013 filed by Respondent No.1 and granted the interim custody of the gold ornaments, subject to conditions that she should not

create third party interest till final disposal of the case; she shall not change the nature of the gold jewellery and produce the same as and when required during the investigation and also at the time of Appeal. She was also directed to furnish the Indemnity Bond of Rs.5,00,000/- and the Investigating Officer was directed to prepare detailed Panchanama and take photographs of the gold jewellery.

4. When the Petitioner challenged the said order before the Sessions Court, the Sessions Court vide its order dated 17th May 2014, confirmed the order of the Trial Court and further held that, even though there may be dispute relating to ownership of the gold jewellery and the articles, as only interim custody of the ornaments was handed over to Respondent No.1, the said order does not call for any interference.

5. Now, in this Writ Petition, it is submitted by learned counsel for the Petitioner that the Petitioner has also produced on record the bills of purchase of the gold ornaments and these bills clearly go to prove that the Petitioner is the real owner of the said gold ornaments. It is further submitted that the bills, which were produced by Respondent No.1 before the Trial Court, are fabricated and forged one. Therefore, the Petitioner has also filed a private criminal case of forgery and cheating against

Respondent No.1 bearing C.C. No.127 of 2014. In the said case, the Trial Court has directed inquiry and investigation under Section 202 of Cr.P.C. Thus, according to learned counsel for the Petitioner, prima facie, the Petitioner has shown that the gold jewellery and articles belong to him. At least he has raised a disputed question relating to ownership of the said articles and gold jewellery. In such situation, the safe custody of the gold jewellery and articles should lie either with the Police or with the Court. He has also urged that some emotional value is attached to the gold jewellery, as it belongs to the wife of the Petitioner, and hence from that angle also, it is necessary that the custody of the gold jewellery should not be handed over to Respondent No.1 and be retained with the Police till the conclusion of the trial.

6. Per contra, learned counsel for Respondent No.1 has submitted that, in the Trial Court, the Petitioner has not at all claimed that he is having the bills of the purchase of the said property. Further it is urged that the case before the Trial Court is at the stage of final hearing. Recording of evidence of Respondent No.1 is in progress. The impugned order of the Trial Court is also subject to certain terms and conditions and in such situation, no interference is warranted in the said order.

7. In my considered view, the order passed by the Trial Court is reasoned one. Only the interim custody of the gold ornaments is handed over to Respondent No.1, that too subject to certain terms and conditions, like execution of the Indemnity Bond of Rs.5,00,000/- and also subject to further conditions like not creating third party interest or not changing the nature of the property and producing it before the Court and Investigating Agency as and when required. A detailed Panchanama is also directed to be prepared of handing over of the said gold ornaments and the photographs are also directed to be clicked. Thus, all the conditions, which are laid down in the Judgment of the apex Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638***, are followed and as per the directions of the Supreme Court in the said Judgment, the interim custody of the property, instead of being retained with the Police or the Court, should be as expeditiously handed over to the parties as may be possible.

8. In the instant case, the Trial Court has followed those directions and imposed the requisite conditions also. As rightly observed by the Sessions Court, only the interim custody of the gold ornaments and articles is handed over to Respondent No.1 and it will not have any effect on the issue of ownership over the said property. It can be decided at the final

hearing or even in the criminal case, which is filed by the Petitioner against Respondent No.1. Handing over of interim custody is not going to decide the issue of ownership over the said property. As regards the submission that emotional value is also attached to the said gold ornaments, the conditions imposed by the Trial Court will take care of the same, as by the said condition, Respondent No.1 is directed not to change the nature of the property and also not to create third party interest in respect of the said property. Now the trial is also in the process. Therefore, there is absolutely no ground made out to interfere in the impugned order passed by the Trial Court and confirmed by the Revisional Court.

9. At this stage, it may also be pertinent to note that in the say filed before the Trial Court, the Petitioner has not averred that he is having the original bills of purchase of the said gold jewellery. They are produced subsequently in the Revisional Court. From this angle also, the case of Respondent No.1, to get interim custody of the gold ornaments, stands on better footing. Hence, this Writ Petition holds no merit, therefore, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]