

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3285 OF 2016

Basrun Biswanath Ghosh

..... Petitioner

V/s

The State of Maharashtra & Ors.

..... Respondents

Mr. Ashok V. Jain for the Petitioner.

Mrs. S.V. Sonawane, APP for the Respondent No.1.

Mr. Rupesh B. Nalawade for the Respondent Nos. 2 to 7.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 10 OCTOBER 2016

ORDER:

1 Not on board. Taken on board.

2 Heard the learned Counsel appearing for the Petitioner, the learned APP appearing for the first Respondent/State and the learned Counsel appearing for the second to seventh Respondents.

3 Rule. The learned APP waives service for the first Respondent and the learned Counsel appearing for second to seventh Respondents waives service. Forthwith taken up for final disposal.

4 The prayer in this Petition under Article 226 of the Constitution of India is for quashing the First Information Report alleging the commission of offences punishable under sections 406 and 420 of the Indian Penal Code, 1860. The allegation is that certain gold was entrusted to the

Petitioner for the purposes of manufacturing ornaments and the Petitioner neither manufactured the ornaments nor returned the gold. The learned Counsel appearing for the second to seventh Respondents states that they have no objection for quashing the First Information Report. We have perused the Affidavit filed by one Prokash Biswanath Ghosh who is the brother of the Petitioner. He has stated that gold ornaments weighing 135.400 grams were kept in his custody by the Petitioner.

5 There is an Affidavit filed by the second to seventh Respondents in which the fact that the golden ornaments were kept with the brother of the Petitioner has been reiterated. In the Affidavit of the brother of the Petitioner, he has given no objection for return of the said ornaments to the third Respondent. In the Affidavit of the second to seventh Respondents, it is stated that there is an amicable settlement between the parties.

6 After having perused the First Information Report and Affidavits on record, we are of the view that the dispute was over a commercial transaction which has been settled. The alleged offence cannot be said to be against the society at large. The parties have paid donation of Rs.10,000/- to the International Society for Krishna Consciousness. The Receipt is produced for perusal of the Court.

7 In view of the law laid down by the Apex Court in the case of **Gian Singh vs. State of Punjab**¹, this is a fit case to exercise the power of this Court under section 482 of the Code of the Criminal Procedure, 1973. Accordingly, we pass following order:

ORDER

i) Rule is made absolute in terms of prayer clauses (b) and (c) which read thus:

“(b) be pleased to issue a writ, order or direction under Article 227 of the Constitution of India and section 482 of the Criminal Procedure Code, 1973 quashing and setting aside the F.I.R. no.375 of 2015 dated 26/10/2015, under section 406 & 420 of Indian Penal Code 1860 pending before the Ld. Addl. Chief Metropolitan Magistrate at 4th Court, Girguam, Mumbai.

(c) Return the property of 135.400 grams of 22 ct. gold ornaments recovered from the Petitioner to the Respondent No.3.”

ii) All concerned to act upon an authenticated copy of this order.

(A.A. SAYED, J.)

(A.S. OKA, J.)

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1 (2012) 10 SCC 303