

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.852 OF 2016

Kapil Kumar Arvind Kumar Parekh.] ... Petitioner

Versus

State of Maharashtra & Ors.] ... Respondents

Mr. Subhash Jha i/b Law Global Advocates for Petitioner.
Mrs. M. M. Deshmukh, APP for State.

CORAM :- RANJIT MORE &
SARANG V. KOTWAL, JJ.
DATE :- 30 JUNE, 2017

P. C. :-

1. Heard the learned Advocate for the petitioner and the learned APP for State.

2. The petition is filed seeking the following main reliefs :-

“a) *that this Hon'ble Court may be pleased to call for the investigation papers concerning C.R.No.599/15 from Bandra Police Station, Mumbai and after examining the legality, validity and / or propriety of the purported panchnama dated 20.10.2015, being Exhibit-'C' annexed herewith, may be pleased to*

quash and set aside the same being fraudulent and manipulated and consequently direct return of diamond-studded gold jewelleryes and cash of Rs.13,50,000/- as reflected in the said panchnama to the Petitioner on such reasonable terms and conditions as this Hon'ble Court may deem fit and proper;

- b) that this Hon'ble Court may be pleased to direct transfer of investigation concerning C.R.No.599/15 of Bandra police station, Mumbai to State CID and / or some other investigating agency as this Hon'ble Court may deem fit and proper so as to ensure proper and effective investigation of the cases;*
- c) that this Hon'ble Court may be pleased to direct the Respondent No.2 to initiate action as against the investigating officer of C.R.No.599/15 and so also other police personnel responsible for manipulating and fabricating evidence in the form of panchnama dated 20.10.2015, being Exhibit-'C' annexed herewith and upon conclusion of the departmental proceeding as against the erring police personnel, such appropriate action be directed to be taken on the administrative side as this Hon'ble Court may deem fit and proper;"*

3. The petitioner is accused no.2 in C.C.No.551/PW/2017 pending on the file of learned Metropolitan Magistrate, 12th Court, Bandra, Mumbai. The case arises out of registration of C.R.No.599 of 2015 for the offences punishable under Sections 406 and 420 r/w 34 of the IPC. The said FIR is initially registered against accused no.1 Rashida and her companion Nishad. The allegations made in the FIR that the accused no.1 Rashida, along with her companion Nishad, misappropriated complainant's 3 golden necklaces worth Rs.18,25,000/-. During investigation, it was found that accused no.1 Rashida sold this misappropriated property to the petitioner who is a jeweller by profession. During investigation, one golden necklace and an amount of Rs.13,50,000/- were recovered from the petitioner, under the panchanama dated 20/10/2015. The petitioner is also shown as accused no.2 and he is charged for the offence punishable under Section 411 of the IPC.

4. The main grievance of Mr. Jha, the learned Advocate for the petitioner, is that the necklace recovered from the petitioner is not the misappropriated property. He also states that the concerned I.O. has not complied with the guidelines laid down in the circular dated 24/07/2009 while recovering the said articles under the said panchanama. In the light of this submission, the reliefs stated above are sought.

5. As stated above, the petitioner is shown as the accused in the said criminal case and he is charged with an offence punishable

under Section 411 of the IPC. Since the charge-sheet is already filed, there is no question of transfer of investigation of the subject FIR.

6. It is the prosecution case that the golden necklace recovered under the said panchanama is the property which is alleged to be misappropriated by the accused no.1. This fact is, however, strongly denied by Mr. Jha, contending that the necklace recovered from him under the said panchanama is not the necklace alleged to be misappropriated by the accused no.1. His contention is that the said necklace belongs to his wife and he was compelled to produce the same under the said panchanama. Thus, there is a dispute about the identification of the said golden necklace. In exercise of jurisdiction under Article 226 of the Constitution of India, we cannot go into these disputed facts. It is for the prosecution to prove in the trial Court that the article recovered under the said panchanama was, in fact, misappropriated golden necklace by the accused no.1. The petitioner will surely get an opportunity to disprove the said fact.

7. Mr. Jha then invited our attention to the circular dated 24/07/2009 issued by the Commissioner of Police, Mumbai, laying down the guidelines regarding preparation of the panchanama in such cases. Mr. Jha submitted while recording the said panchanama, the guidelines are not followed by the I.O. On the basis of these contentions, he seeks quashing and setting aside the said FIR. We are not inclined to grant this relief also in exercise of the jurisdiction under Article 226 of the Constitution of India. The question whether

there is any illegality or irregularity in compliance of the guidelines laid down in the said circular, will have to be determined at the trial of the above-referred criminal case, especially in the circumstance of the prosecution case that the golden necklace recovered from the petitioner is the misappropriated article i.e. the same article which was misappropriated by the accused no.1.

8. We are also of the opinion that the question of initiating the departmental enquiry proceedings of the alleged erring police officer will not arise at this preliminary stage.

9. Taking totality of the facts and circumstances of the case, we find that no case is made out for interference.

10. The petition is dismissed.

(SARANG V. KOTWAL, J.)

(RANJIT MORE, J.)