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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL REVISION APPLICATION NO. 442 OF 2014**

Bhawarlal Maganlal Jain ... Applicant

vs.

Veena Nilesh Jain & Anr. ... Respondents

Mr. Niranjana Mundargi i/b. Deodatta LaxmanLad for the Applicant.

Mr. Rajendra Sorankar i/b. S.K. Jain and Associates for Respondent no.1

**CORAM : A.K. MENON, J.**

**DATE : 6<sup>th</sup> JULY, 2017**

**P.C.,**

1. By this revision application the applicant who is the father in law of the first respondent challenges an order dated 28<sup>th</sup> November, 2014 whereby the Sessions Court set aside the order passed by the Metropolitan Magistrate 29<sup>th</sup> Court, Dadar Mumbai in Miscellaneous Application no. 454/M/2014 directing the return of property claimed by the applicant.

2. The facts in brief leading to the present matter reveal that the respondent no.1 is the daughter in law of the applicant and who had filed an application under the Protection for Women from Domestic Violence Act , 2005(DV Act) against her husband. The DV Act application was disposed of on 30<sup>th</sup> November, 2011 directing the husband to pay maintenance of Rs.10000/- per month and Rs.5000/- towards rent for accommodation. It was also held that respondent no.

1 was not entitled to any relief against the applicant and his wife viz. mother in law of respondent no. 1. The husband appealed against the said order but the challenge came to be dismissed by the Sessions Court. The dismissal was then challenged, albeit unsuccessfully in the High Court and the High Court directed certain amount to be deposited by the first respondent 's husband which he has failed to do.

3. The first respondent thereafter filed a Miscellaneous application for issuing warrant of attachment which was allowed and the police authorities have attached articles in the house of the applicant as recorded in a panchnama. The respondent no. 1 claims the attached articles partly as her husband's property and partly as her stridhan.

4. Being aggrieved, the petitioner filed an application for return of property which came to be allowed. The Sessions Court found it necessary to interfere and since recorded that when the property was attached no objection was raised by the applicant and set aside the order. The applicant herein has contended that his son had separated from respondent no.1 and the articles seized by the police belonging to the applicant who has not been held liable to make any payment to respondent no.1.

5. It appears that the husband of the respondent no.1 was habituated to consuming alcohol and was admittedly not residing with the applicant. The order

granting maintenance is still in operation. However, according to respondent no.1 her husband and present applicant is acting on an understanding with his son in order to save and protect the interests and property of the husband and with that intention the applicant is assisting the husband to avoid payment of maintenance. There are two residential premises which belong to the applicant which are in the same building viz. flat nos. 101 and 103. The Sessions Court proceeded on the basis that the respondent- husband and in laws are in joint ownership of the property.

6. In this revision we are concerned with the application for return of property. On 8<sup>th</sup> January, 2015 this Court granted an ad-interim injunction staying the order of the Sessions Court till the disposal of this application. Today this revision has been taken up for final disposal. On behalf of the revision applicant, it was submitted that the parties were at one stage ready to go to mediation and accordingly a Mediator was appointed but mediation has failed. The Mediator has also filed report dated 18<sup>th</sup> June, 2016 to that effect.

7. I have heard the learned Counsel for the parties at length. Mr. Mundargi submitted that at all material times and after some years of the marriage of the applicant's son Nilesh, the first respondent and her husband Nilesh were staying with the applicant. Thereafter since the son was reportedly addicted to gambling and other vices the relationship between and respondent no.1 and her husband as also his father i.e. the applicant had deteriorated. Attempts to restore the

relationship had failed and as a result the son started residing separately in flat no. 101 whereas applicant was residing in flat no. 103. The applicant's son had apparently abused and assaulted the applicant in July 2008 in respect of which a complaint had been lodged by the applicant in Kandivali Police Station and the complaint is annexed. Thereafter the applicant no.1 has also published a notice in Navkal newspapers disowning his son who by then left residence of the applicant taking with him his belongings. The applicant contended that his son had always been harassing him for money and threatening the applicant with dire consequences.

8. Mr. Mundargi further submitted that on 20<sup>th</sup> May, 2010 when the applicant and his wife were at Udaipur, the first respondent alleged that her husband was found in the flat with an unknown lady and when she confronted him an altercation ensued resulting in her being assaulted and thereupon the first respondent filed a complaint against him in the Kandivali Police station which led to his arrest and subsequent release on bail.

9. Admittedly, the applicant was not in Mumbai at that time but the applicant and his wife and son were also mentioned in the FIR as a result of which they approached the Sessions Court and the applicant and his wife were granted Anticipatory Bail. It was submitted by Mr. Mundargi learned Counsel for the applicant that respondent no. 1 has been staying separately with her brother at Parel and had disowned her husband but had cordial relation with the

applicant. In the circumstances it is submitted that none of the belongings of the respondent no.1 are in flat no. 103 where the applicant is residing.

10. Mr. Sorankar, learned Counsel appearing on behalf of the respondent no.1 however submits that all items lying in the premises of flat no. 103 constitutes his client's property and her stridhan. He relied upon averments in the affidavit in reply in which his client has contended that after her marriage she started staying in flat no. 103. References are made to the vices that her husband was habituated to and harassment she was alleged subjected to by her husband and allegedly by her in laws. He submits that even her stridhan including silver and gold jewelery is in the possession of the applicant. According to her the jewelery was now missing along with some articles belonging to her and her husband.

11. Mr. Sorankar invited my attention to Exhibit-A to the affidavit in reply being a copy of Ration card No. SD 0208560 issued to the husband of the respondent wherein the address mentioned is that of flat no. 103 and the names of the respondent's husband and two children are shown. He also relied upon two photographs wherein certain items are depicted which reportedly contain articles which the respondent no. 1 received at the time of her marriage and constituted Stridhan. Mr. Sorankar submitted that all items presently attached belong to respondent no.1 since she was residing in the said flat no. 103 at the material time.

12. On a query from the Court Mr. Sorankar conceded that the ration card does not mention the name of the present applicant and his wife although the applicant and his wife admittedly reside in flat 103. The ration card by itself in my view does not establish ownership of property. Admittedly the ration card also shows the names of one Ritesh who is the brother in law of the respondent no. 1. In the circumstances the claim of exclusive possession of all the property lying in flat no. 103 is not made out. Various documents are since annexed to the present application. The order dated 30<sup>th</sup> November, 2011 passed by the Metropolitan Magistrate 29<sup>th</sup> Court, Dadar is directed against respondent no.1 therein namely Mr. Niles, husband of the present applicant directing him to pay a sum of Rs.10,000/- per month towards maintenance and Rs.5000/- towards rent.

13. A perusal of the complaint that reveals that a total of 71 items were attached, out of which several items do not appear at all to be items of Stridhan. Further, what is pertinent to note is that till the stay order was passed in Domestic Violence proceedings, the respondent no.1 has not contended that any of her property including Stridhan are lying in flat no. 103. In fact in the MA No.454/2014 filed there is no mention of all these properties at all. On the other hand note in the application No. 976 of 2013 made in CC No. 86/MA of 2010 seeking issuance of warrant against her husband Niles, the respondent no.1 after contending that her husband is in arrears of about Rs.2,70,000/- seeks attachment of immovable properties. Paragraph 7 of that application reads as follows:

*“I say that if the order as prayed for is not granted and I am called upon to attach his immovable properties than it will amount to delay the payment to me. I further say that immovable property is situated at Palghar, District – Thane and as such it will not be possible for me to follow the warrant of attachment. I say that in spite of my best efforts I could not find as to who is the owner of his office premises and residence at Mumbai. It is therefore just and necessary that warrant as prayed may be ordered to issue.”*

14. In view of the said averment, respondent no.1 sought issuance of warrant due to non compliance. No demand averment was made relating to stridhan or any property belonging to the respondent no.1 and lying in flat no. 103. Furthermore, it appears from the record that the respondent no.1 left the matrimonial home on or about 2006 and no claim has been made seeking return of the said property and belongings.

15. In the course of submissions Mr. Sorankar had tendered a copy of the original complaint filed by the Respondent no. 1 in the Court of Dadar seeking reliefs under the D.V. Act. A list of Stridhan allegedly in the possession of the applicant and his wife and one of the prayers seek return of Stridhan as per list annexed thereto. A perusal of the list and a comparison with the items seized vide the panchnama reveals that apart from “About 1800 gms of Silver articles and wares” none of the other items seized were claimed as Stridhan.

16. As can be seen from Exhibit G viz. the photographs on which Mr. Sorankar relied, it displays items which were allegedly given to the first respondent no.1 at

the time of her marriage. It is difficult to accept the contention that all the items shown in the photographs are listed in the panchnama. The photographs are at best an aid to assist us in ascertaining the correctness of the respondent no.1's contention. It is not conclusive proof. Counsel have tendered an agreed translation of the panchnama. By the noting of record it is established till 17<sup>th</sup> August, 2014 all items except those mentioned at item nos 8 to 30, 32, 33 and 35 to 37 prima facie appears to be item of daily use of the applicant and his other family members items. The admitted position is that applicant is residing there with his family members. Only some of the items described in the earlier paragraphs are probably belonging to the respondent and/or jointly with her husband. Those may not be subjected the order of return of property.

17. Ideally this matter which requires parties to settle and arrive at an amicable solution. However, the contention of the respondent no. 1 wife is that her husband and his father viz. the present applicant have colluded to deprive her of her Stridhan. The Sessions Court has by considering the Revision application proceeded on the basis that the applicant and his son are still joint in property. In the circumstances, save and except the items mentioned in paragraph 16 above setting aside the order of the Sessions Court is not justified. It is not in dispute that flat No. 103 is used as residence of the applicant and that the respondent and her husband were residing in flat no. 101 but would also use Flat no. 103. It is difficult to accept the contention of the respondent no. 1 that she and her husband would use the flat no. 101 only to retire at night. Items of

personal use would therefore have been kept by respondent no. 1 at flat no. 101. In the circumstances, the order of the Sessions Court setting aside the Order of the magistrate cannot be sustained but requires to be modified. In the result I pass the following order :

- (i) The impugned order passed by the Sessions Court is set aside to the extent it concerns the items described at serial numbers 8 to 30, 32, 33 and 35 to 37 in the Panchnama.
- (ii) As far as item numbers 1 to 7, 31, 34 and 38 to 71 the order of the Magistrate Court 29<sup>th</sup> Court, Dadar dated 7<sup>th</sup> August 2014 in M.A.454/2014 stands confirmed.
- (iii) Revision application disposed in the above terms.
- (ii) No costs.

**(A. K. MENON, J.)**