

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 403 OF 2018**

Himani Harish Goswami

....Petitioner.

Vs.

The State of Maharashtra & Ors.

....Respondents.

Mr. Naveen Chomal for the Petitioner.

Mr. S.S. Hulke APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 11th SEPTEMBER, 2018.****P.C.:-**

By the present Petition, the Petitioner/first informant in CR No. 714 of 2015 registered with D.N. Nagar Police Station, Mumbai, has impugned Order dated 31st July, 2017, passed by the learned Additional Sessions Judge, Borivali Division Dindoshi Mumbai in Revision Application No. 52 of 2016, dismissing the said Revision.

2 Heard the learned counsel appearing for the Petitioner and the learned APP. Perused the record.

3 As noted earlier, the Petitioner is the first informant in CR No. 714 of 2015 registered with D.N. Nagar Police Station under Section 381 and 457 of the Indian Penal Code, against the Respondent No.2.

4 It is the case of the prosecution that, the Respondent No.2 was employed as a maid in the house of the first informant and during her tenure of employment, it is alleged that, she committed theft of various articles, gold ornaments and cash amount from the house of the informant. After completion of investigation, the police have submitted charge-sheet.

5 The Petitioner had filed an Application before the Trial Court for return of the property, which was partly allowed and the Investigating Agency was directed to return the gold ornaments to the Petitioner on her execution of indemnity bond.

As the cash amount was not returned to the Petitioner by the Trial Court, she preferred a Revision Application before the Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai, which has been dismissed by the impugned order.

6 The police report dated 2nd March, 2016 filed in Revision Application No. 52 of 2016, clearly mentions that, the Investigating Agency did not have any objection for return of the cash amount to the Petitioner after taking appropriate security from her.

7 The return of property Application was objected by the Respondent No.3 who is the brother of Respondent No.2 on the

ground that, it was he, who had paid the said amount to the Respondent No.2 towards recovery of the amount involved in the crime and the said amount was not part and parcel of the property involved in the alleged crime.

8 It is a matter of fact and even as per the case of the prosecution, the Investigating Agency has seized the said amount of Rs.7,57,420/- from the Respondent No.2 during the course of investigation as proceeds of crime. Whether the said amount was given by Respondent No.3 to Respondent No. 2 or not will be decided after full-fledged trial. However, during the pendency of the trial, the Petitioner being the informant, is entitled to receive the said amount on her furnishing appropriate security in that behalf.

9 In view of the above, the impugned Order dated 31st July, 2017 passed by learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai in Revision Application No. 52 of 2016, is hereby quashed and set aside and the Petitioner is permitted to receive the said amount of Rs.7,57,420/-, during the pendency of the trial in CR No. 714 of 2015 registered with D.N. Nagar Police Station on her furnishing an undertaking to the Trial Court that, in case the Trial Court directs the Petitioner to bring back the said amount she, without

any demur, will produce the said amount before the Trial Court.

The Petitioner will also give an indemnity bond before the Trial Court that, she indemnifies the Investigating Agency for an amount of Rs.8,00,000/-towards return of the said property.

10 The Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

S S Mashalkar Digitally signed by S S Mashalkar
Date: 2018.09.21 17:54:54 +0530