

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1165 OF 2018

Daxa Agarwal.] ... Petitioner

Versus

State of Maharashtra.] ... Respondent

Ms. Tahera Qureshi Advocate appointed through High Court Legal Aid, present.

Mrs. P. P. Shinde, APP for State.

PSI Ashwinikumar Kagale attached to Santacruz Police Station, present.

**CORAM :- R. M. SAVANT &
SARANG V. KOTWAL, JJ.**

DATE :- 27 APRIL, 2018

P. C. :-

1. The above Writ Petition has been filed seeking a direction against the investigating agency to conduct a further investigation in the form of house search for recovery of 'Stridhan' and cash in presence of the complainant i.e. the Petitioner along with the police force / protection at 101, Navyug Market, Gaziabad - 201001, UP, which was the matrimonial house of the Petitioner herein. The Petitioner is the first informant who has registered the FIR for the offences punishable under Sections 498A, 323 and 504 read with Section 34 of the IPC.

2. Insofar as the investigation is concerned, it is complete and a charge-sheet came to be filed by the police on 20/12/2017. During the course of the investigation, what has been recovered is the jewellery worth Rs.3,66,000/-. It is the case of the first informant that total value of what was to be recovered is in the region of around Rs.24 Lakhs. It is required to be noted that the first informant, when her initial statement was recorded, had mentioned that the value of the various items which she had brought and which were given to her in the marriage, was in the region of Rs.16 Lakhs. However, thereafter in the supplementary statement, the value has been increased to Rs.24 Lakhs by the first informant. The investigating agency has carried out the search at the address which we have referred to in the earlier part of this order and beyond what has been recovered and which has been handed over to the Petitioner, no other recovery was made.

3. The accused had filed an application being Criminal Application No.106 of 2017 in this Court for quashing of the said FIR being C.R.No.489 of 2016, *inter alia*, on the grounds mentioned in the said Application. The said Application came to be disposed of by a

Division Bench of this Court by observing that in the facts of the case, it would be proper to allow the investigating agency to submit the final report under Section 173 of the Cr.P.C. At a prior point in time when the accused had applied for the anticipatory bail, the investigating agency, it seems, had made a statement that the investigation is in progress and recoveries are to be made. The Petitioner had also applied under the Right to Information Act, 2005, to the concerned authority. The Petitioner received a reply that since the investigation is on, the information sought could not be granted to the Petitioner in view of Section 8(1)(j) of the said Act. It is having regard to the extent of the recovery made by the investigating agency, as also relying upon the statement which was made on behalf of the investigating agency during the ABA proceedings that the learned Counsel for the Petitioner endeavoured to urge that further investigation is necessary. Insofar as the aspects which are sought to be highlighted i.e. the difference between the recovery and the value of the articles as claimed by the Petitioner, we are of the view that the same would be a matter of trial and it would not be appropriate for us to express any opinion in that regard at this stage. Having gone through the necessary material, we are of the view that the

investigation could not be said to be carried out in such a manner so as to warrant further investigation. It is required to be borne in mind that the FIR was registered in the year 2016, the charge-sheet has been filed in the year 2017. The substantive relief sought by the Petitioner which we have adverted to in the earlier part of this order, would, therefore, have to be considered in the said context also. If so considered, we are of the view that the request of the Petitioner cannot be acceded to. The Writ Petition is accordingly dismissed.

4. Needless to state that if any independent proceedings are filed by the Petitioner, either under the Hindu Marriage Act, 1955, or under the Protection of Women from Domestic Violence Act, 2005, the same would undoubtedly have to be tried on their own merits and in accordance with law.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)