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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 286/2018**
AROoba Petitioner

Through: Mr. P.N. Dhar, Adv.

versus

STATE & ANR Respondent
Through: Mr. Ashish Dutta, APP for State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **19.01.2018**

Vide the present petition, the petitioner assails the order dated 11.01.2018 of the MM, (Mahila Court)-02, Central District, THC, Delhi which to the effect that:

“The present application was filed on behalf of the applicant/accused seeking direction of the court to the Investigating Officer directing him to collect 72 tolas (approximately) gold jewellery articles along with dowry articles/istridhan, which are in the possession of the applicant/accused belonging to the complainant and which, she is refusing to receive. Further, it is stated in the application that in case the complainant refuses to receive the said articles, the Investigating Officer be directed to collect them and deposit the same in Malkhana, PS Sadar Bazar.

In the reply filed on behalf of the complainant, it is stated that the present application is not maintainable, as the court does not have the power to interfere in the investigation, as the investigation is the prerogative of the Investigating Officer.

The court is of the opinion that, it is settled law that

the court has the power to ensure proper investigation. In view of the same, the complainant is directed to collect the aforesaid articles, as per admitted list from the accused in the presence of the Investigating Officer. In case of failure to do so, the Investigating Officer is directed to seize the articles as per law and deposit the same. application is disposed off accordingly.”

On behalf of the petitioner reliance has been placed on the verdict of the Apex Court in case of ***R. Sarala Vs. T.S. Velu and Ors.(2000) 4 SCC 459*** and in the case of ***Union of India Vs. Prakash P. Hinduja and Anrs.(2003)6 SCC 195*** submitting to the effect that the Magistrate cannot interfere with the investigation or during the course of investigation and that investigation and prosecution are two different aspects of the administration of the criminal justice system and formation of the opinion as to whether on the material collected a case is made out to place the accused for trial is the exclusive function of the officer in charge of the police station.

FIR 51/17, PS Sadar Bazar is indicated to have been registered under Sections 498A/406/34 of Indian Penal Code, 1860 on the complaint of the petitioner therein, wife of the respondent no.2, in relation to the allegations made by her of misappropriation of her articles of jewellery, dowry, stridhan and cruelty meted out.

As per impugned order, it is brought forth that the application has been filed on behalf of the applicant/accused arrayed on record as respondent no.2 seeking a direction of the Court to the Investigating Officer directing him to collect 72 tolas (approximately) gold

jewellery articles along with dowry articles/istridhan, which were in the possession of the applicant/accused belonging to the complainant

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and which, she was refusing to receive and it was stated in the application that in case the complainant refused to receive the said articles, the Investigating Officer was directed to collect them and submit the same in Malkhana, PS Sadar Bazar. The applicant, the petitioner herein, is indicated to have submitted as has also now been urged during the course of proceedings in the present petition that the Court did not have the power to interfere in the investigation as the investigation is the prerogative of the Investigating Officer.

Vide the impugned order, the trial Court has observed to the effect that the Court has the power to ensure proper investigation was conducted and that in view thereof, the complainant was directed to collect the articles as per admitted list from the accused in the presence of the Investigating Officer and in case of failure to do so, the Investigating Officer was directed to seize the articles as per law and deposit the same.

On behalf of the State, the Investigating Officer SI Ravi Kumar is present and it has been submitted on behalf of the State that the said articles have not yet been seized.

At the outset, it is essential that the observation in relation to the reliance as has been placed on behalf of the petitioner on the verdict of the Apex Court in the circumstance of the case is in facts not in *pari materia* with the intention as brought forth through the impugned order dated 11.01.2018. Apparently, the apprehension of

the petitioner is in relation to the aspect that apart from the alleged 72 tola gold jewellery articles along with dowry articles which the respondent no. 2 claims is in the possession of the petitioner, there are

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other articles of stridhan, jewellery and dowry, yet to be recovered.

On behalf of the State, the Investigating Officer submits that the contention of the petitioner in relation to 1035 grams (approximately) gold jewellery have also already been verified.

It is essential to observe that vide the impugned order there is no embargo to further investigation that has been ordered against the petitioner in any manner. In the order dated 11.01.2018 it is observed to the effect that if there are any articles of jewellery or articles of dowry which the complainant/petitioner is stated to have been given during the course of her marriage to be collected by the complainant from the accused as per the admitted list, and if not so done, the same be seized by the Investigating Officer as per law and be deposited. In the circumstances, there is apparently no infirmity in the impugned order dated 11.01.2018. The petition is declined.

Nothing stated hereinabove, shall however amount to any expression on the merits of the case.

ANU MALHOTRA, J

JANUARY 19, 2018

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