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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 21st August, 2018

+ CRL.M.C. 4107/2016

LALITA

..... Petitioner

Through: Ms. Shashi Bala for Mr. Anil K.
Batra, Advocate with Mr.
Praveen Kumar, Advocate.

versus

THE STATE & ANR

..... Respondents

Through: Mr. Ravi Nayak, APP for State
with ASI Shiv Charan, P.S.
Vijay Vihar.
Mr. Mahendra Singh, Adv. with
R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The case (first information report) (FIR) No. 417/2013 was registered by Police Station Vijay Vihar at the instance of the petitioner (wife), *inter alia*, against the second respondent (the husband), it involving offences punishable under Sections 498A/406/34 Indian Penal Code, 1860 (IPC). The second respondent (husband) was arrested in the course of the said investigation, his bail application (no.1834/2013) having come up before this Court on 11.10.2013. The said respondent was produced from custody pursuant to the production warrants that were issued. The parties at that stage entered into a negotiated settlement, the terms whereof were recorded

in the proceedings dated 11.10.2013, the interim arrangement being as under:-

“(i) It is agreed that petitioner will return 100 grms. of gold to the complainant within three weeks of the date of his release.

(ii) Without prejudice to his rights and contentions and subject to further orders which may be passed by the appropriate court of jurisdiction, petitioner undertakes to this court to pay interim maintenance @ Rs.5000/- per month to the complainant and her minor child w.e.f. 1.10.2013. The said money will be deposited directly in the bank account of the complainant on or before 7th day of each English calendar month. The account number shall be communicated to the petitioner through counsel either by SMS, e-mail or by a letter.

(iii) Petitioner shall not give up his share in the ancestral property(ies).

Parties shall remain bound by the above said arrangement and the same is taken on record.”

2. The learned single judge took note of the said interim arrangement and allowed the bail application by following directions:-

“Heard. Taking into consideration the facts of this case and the interim arrangement arrived at between the parties, the present bail application is allowed. Consequently, petitioner shall be released on bail on his furnishing a personal bond in the sum of 10,000/- with one surety of the like amount to the satisfaction of the trial court.

All rights of the parties are kept open. The interim arrangement is without prejudice to the rights and contentions of both the parties. Parties have been explained the consequences of breach of undertaking, which is given to this court. In case an application is filed for maintenance, the appropriate court will decide the application in accordance with law, unaffected by any observations made in this order today. However, in case 100 grms. gold is not returned to the complainant within three weeks from the date of release of the petitioner and violation of any condition of this order, will give right to complainant to seek variation of this order.

Bail application stands disposed of.”

3. The petitioner (wife) had some grievances as to the return of the gold in terms of the above mentioned interim arrangement. She, thus, brought the petition – CrI.M.C. No. 677/2014 – which was considered by another single bench of this Court on 16.12.2015 when the following order was passed:-

“The respondent no.1 has informed that he has already deposited the gold with the Investigating Officer. The investigating officer has informed that as per the order, the gold has been deposited and he got the same verified from the goldsmith also which shows the market value of the gold to Rs.2,39,000/-.

Learned counsel for the petitioner has submitted that the gold is not pure gold and even as per the certificate, the value of gold as on date is Rs.26,000/- for 10 grams and as per the petitioner, it should be pure gold of 100 gm.

In the facts and circumstances of the case, the present petition is disposed of with the direction to the Investigating Officer to return the gold furnished before him to the respondent no.1 and the respondent no.1 would be at liberty to deposit the amount equal to 100 grams with the investigating Officer within a period of five months.

This petition is disposed of in the above terms.”

4. The present petition was filed on 27.10.2016 by the complainant (wife) once again submitting that the aforesaid condition in the interim bail order had not been duly complied with. It appears pursuant to the liberty granted, she has already filed an application for maintenance allowance to be awarded, which matter is pending before the competent court where appropriate orders would be passed that would regulate the obligation of the second respondent on that score. The present petition under Section 439(2) of Code of Criminal Procedure, 1973 (Cr.P.C.) is pressed *vis-a-vis* the obligation of the second respondent with regard to return of the gold to the extent of 100 grams.

5. The second respondent through counsel submits that after the order dated 16.12.2015, he had remitted an amount of Rs.1,49,000/- by deposit in the account of the petitioner (wife) in two parts in 2017. He concedes that the gold to the extent of 100 grams was released to him from the *malkhana* of police station on 29.01.2016 but status report dated 21.03.2017 states that no amount was deposited by the second respondent with police pursuant to the directions in the order dated 16.12.2015. The petitioner (wife) also denies having received

the aforesaid amount by deposit into her account from the second respondent.

6. In the above facts and circumstances, it would be proper to direct the concerned Metropolitan Magistrate to hold an inquiry. The second respondent is given liberty to place before the said court, within four weeks hereof, proof of the deposit of the money in the account of the petitioner (wife) equivalent to the value of 100 grams gold as is claimed. While holding the inquiry and calling upon the wife to respond to such claim, the Metropolitan Magistrate will have to bear in mind that the amounts payable towards the maintenance allowance are to be kept apart rather than being mixed up with his obligation towards the return of the gold as per the settlement referred to earlier. In case the second respondent is found to have committed default in compliance with the direction(s) about return of (the value of) the gold, the Metropolitan Magistrate will have the liberty and jurisdiction to hold him to be in breach of material condition of the bail order and consequently proceed to issue the necessary directions thereupon, including of cancellation.

7. With these directions, the petition is disposed of.

8. *Dasti* to all sides.

R.K.GAUBA, J

AUGUST 21, 2018

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