

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 1077 OF 2018

(Pitamber s/o Narayan Gaidhane vs. State of Maharashtra thr. its Secretary, Home Department
& Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's Orders.

Court's or Judge's orders.

**CORAM : SUNIL B. SHUKRE &
PUSHPA V. GANEDIWALA, JJ.
APRIL 24, 2019.**

Heard Shri R.A. Bagade, learned counsel for the petitioner and Shri A.A. Madiwale, learned APP for respondent Nos. 1 to 4.

The main prayer in this petition reads as follows :

“(a) to issue direction, or order, writ to the respondent no. 1 to recover the amount of gold ornament and ear ring of Rs.1,30,000/- from the respondent no. 4 or who will be responsible for that who did not seize the gold ornaments of the petitioner who had been requesting to them by making complaint and compensate to the petitioner with such amount.”

However, the similar prayer in different words was also made by the petitioner in Writ Petition No. 267 of 2016. That prayer made vide clause (C) is reproduced as follows :

“(C) Direct the respondent No. 2 to seize the incriminating article from the respondent No. 4 and

submit its report u/s 173(8) of the code of criminal procedure to the concerned J.M.F.C. having jurisdiction u/s 102 Cri. P.C.”

The learned Single Judge of this Court, while disposing of Criminal Writ Petition No. 267 of 2016 found that the gold jewellery which was sought to be seized through the Investigating officer by the petitioner, had already changed hands and that it finally fell into the hands of respondent No. 4 – Shriram City Union Finance. The learned Single Judge further found that Shriram City Union Finance had auctioned the articles in its custody. The learned Single Judge further found that the Investigating Officer would take appropriate steps for bringing the sale of the articles by action, to the notice of the learned Magistrate so that the appropriate action/ steps could be taken against respondent No. 4 – Shriram City Union Finance and the statement so made by the learned APP on behalf of the Investigating Officer was accepted by the Court. Then, the learned Single Judge concluded that in view of the subsequent development i.e. auction of the articles sought to be produced by the petitioner, nothing survived for consideration in that petition.

The learned Single Judge further concluded that even the learned counsel for the petitioner did not press that petition and sought leave to withdraw the same with liberty to take appropriate steps against Shriram City Union Finance as well as the concerned Investigating Officer.

These findings recorded by the learned Single

Judge of this Court has the effect of not granting the prayer (C) in that petition regarding issuance of directions to the Investigating officer (Respondent No. 2 therein) to seize the incriminating articles from respondent No. 4 therein i.e. Shriram City Union Finance.

Now, a similar prayer regarding recovery of these articles through respondent No. 1 i.e. State of Maharashtra from respondent No. 4 had been made. This prayer has been made, knowing fully well that the articles are not in possession of respondent No. 4. Once upon a time they were in possession of Shriram City Union Finance, but those articles had been sold through auction by Shriram City Union Finance.

Petition is, therefore, nothing but a mischievous attempt on the part of the petitioner to mislead this court as well as make an attempt to circumvent the order passed by the learned Single Judge on 06.12.2017. This is also in spite of the fact that the Criminal Writ Petition No. 267 of 2016 was not pressed by the petitioner.

In the circumstances discussed earlier, what was open to the petitioner at the most was to knock at the doors of the civil court for claiming compensation from those persons who were responsible for loss of the valuable articles of jewellery, which the petitioner claims to be belonging to him. But, instead of doing so, the petitioner has once again approached this Court by making similar prayer, though in different words. Such an attempt on the part of the petitioner cannot be countenanced by the court.

Prayer clause (b) seeks initiation of departmental inquiry. But, when the prayer clause (a) does not survive in view of the finality attained by the matter, after the learned Single Judge disposed of the previous Criminal Writ Petition No. 267 of 2016, prayer clause (b) would also have to be rejected and it is accordingly rejected.

Criminal Writ Petition is dismissed with cost of Rs.5,000/- (Rs. Five thousand only) to be deposited with the Legal Services Sub-Committee, Nagpur, within a period of four weeks from the date of the order, failing which the cost would be recovered by treating the same as arrears of revenue due to the Government.

JUDGE

JUDGE

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