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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.338 OF 2019

Afreen Joheb Khilji
Age : 26 years, Indian Inhabitant
R/o : Room No.405, Gafur Khan Estate,
Kurla (W), Mumbai 400 070

... Applicant
(Orig. Complainant)

Versus

1. The State of Maharashtra
2. Joheb Maqbul Khilji
Age : 30 years, Occ: Business
3. Shakil Khilji
Age : 45 years, Occ: Business
4. Mena Khilji
Age : 67 years, Occ: Housewife
5. Maqbul Khilji
Age : 73 years, Occ: Business
6. Mr. Mehmood Mhilji
Age : 40 years, Occ: Business
7. Aslam Khilji
Age : 32 years, Occ: Business
8. Anjum Khilji
Age : 41 years, Occ: Housewife
All R/at : Darukhana, Kosla Bandar,
Near Ganesh Hotel, Lohar Ki Galli,
Ray Road, Mumbai.

... Respondents
(Orig. Accused Persons)

Mr. Subir Sarkar, Appointed Advocate for the Applicant.
Ms. Shweta Varadkar i/b. Mr. Maroof Khan for the Respondent No.2.

Mr. P.H. Gaikwad – Patil, APP for the Respondent – State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 28th FEBRUARY 2020.

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith with the consent of the parties. The applicant had filed a petition under the provisions of the Protection of Women from Domestic Violence Act before the Metropolitan Magistrate, 51st Court, Kurla in C.C. No.272/DV/2015. The complaint was filed against the husband as well as the family members who had resided in the shared household along with applicant. In the said petition, the complainant was seeking maintenance as well as the return of the articles which she had carried along with her at the time of marriage. There was an averment in the complaint that she had carried golden jewellery with her and she was seeking return of the same.

2 The learned Magistrate has observed that the applicant has not placed on record any material to indicate that she had taken golden jewellery along with her at the time of marriage. The learned Magistrate had on the said ground rejected the prayer for return of jewellery as there was no evidence brought on record by the applicant. The said prayer was rejected by an order dated 1st April 2017.

3 The learned Magistrate had granted maintenance of Rs.7,000/- to the applicant and Rs.3,000/- to the minor daughter.

4 Being aggrieved by the said order, the applicant had filed Criminal Appeal No.519 of 2017 before the Sessions Court at Bombay.

5 At the time of hearing of the appeal, the appellant had placed on record the photocopies of the receipts/bills of certain golden ornaments. However, the appellate Court was of the opinion that the same were not produced before the Magistrate and hence, no interference is called for in the said order. The appeal was dismissed vide judgment and order dated 24th April 2019. Hence, this revision application.

6 The learned counsel for the applicant (appointed) submits that in fact the applicant was being represented through legal aid and that she was not well versed with the procedure of law and therefore, in all fairness she has only sought return of her golden ornaments hence, it is prayed that the matter be remanded back to the trial Court for considering the said prayer afresh.

7 The learned counsel for the respondent vehemently submits that the applicant had hardly resided in her matrimonial house and she had

left the house along with her relatives and while leaving the matrimonial abode she had carried all her belongings with her, including golden ornaments and therefore, nothing remains to be returned.

8 The learned counsel for the respondent also submits that the said bills and receipts are photocopies and that it was incumbent upon the applicant to place on record the originals of the said receipts for adjudication of the said issue.

9 At this stage, the applicant is seeking return of her belongings as a matter of right, as she claims it to be her Stridhan. She had given a list of her belongings. The same needs to be considered afresh on its own merits and the right cannot be denied merely because she has not placed bills at the stage of hearing of the matter before the learned Magistrate.

10 In view of the above observations, the matter is remanded back to the Metropolitan Magistrate, 51st Court at Kurla. The learned Magistrate without being influenced by any of the observations made either by the appellate Court or by this Court shall consider the material on record in its proper perspective and decide the application seeking return of articles afresh, provided that the applicant files a fresh application along with a list of articles and the bills. The said application be considered in the eventuality, it is filed within four weeks from today. The learned Magistrate

shall compare the photocopies along with original bills and decide the claim afresh. Application be decided as far as possible within three months from the date of filing. Rule is made absolute on above terms.

11 The learned counsel Mr. Subir Sarkar is appointed by the High Court Legal Services Committee to espouse the cause of the applicant. In view of this, his professional fees are quantified as per Rules and be paid by the High Court Legal Services Committee, Mumbai.

(SMT. SADHANA S. JADHAV, J.)