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

***CRIMINAL INTERIM APPLICATION NO.825 OF 2021
(For Return of Property)
IN
CRIMINAL APPEAL NO.217 OF 2021***

The State of Maharashtra
(through Sub Divisional Officer Shrivardhan) ...Applicant

Versus

Shree Ganapati Dev Ani Pujechi Nemnuk Trust
Registration No.A604.
Registered under the Maharashtra Public Trust Act
and Rules 1950.
Through Trustee – Balkrishna Ganesh Bapat
Age : 54 years, Occu.: Agriculture,
R/o.: At Post. Diveagar,
Tal. Shrivardhan, Dist. Raigad ...Respondent

2 to 14 (deleted)

Mr. S. V. Gavand, A.P.P for the Applicant – State.

Mr. R. S. Apte, Senior Counsel a/w Mr. Ketan A. Dhavle, for the Respondent.

Mr. Amit Tanaji Shedage, Sub-Divisional Officer, Shrivardhan, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 31st MARCH, 2021

ORDER. :

1. At the outset, learned APP appearing on behalf of the applicant – State seeks leave to amend to delete the names of Respondent Nos.2 to

14 from the array of Respondents in view of the order dated 3rd March 2021, passed by this Court (Coram: Sandeep K. Shinde, J.) in Criminal Application No.2038 of 2018 in Criminal Appeal (Stamp) No.1482 of 2018. Leave granted. Amendment to be carried out forthwith.

2. Heard learned counsel for the parties.

3. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Apte, waives notice on behalf of the sole respondent.

4. Mr. Gavand, learned APP submits that pending the hearing and final disposal of the aforesaid appeal filed by the respondent - Shree Ganapati Dev Ani Pujechi Nemnuk Trust, the applicant – State be permitted to make a gold mask of Lord Ganesha from the gold seized in the said case i.e. Special MCOC Case No.01 of 2012, and returned to the applicant – State, and the applicant – State be permitted to further install the same in the Ganesh Temple, at Diveagar.

5. Learned senior counsel for the respondent – Shree Ganapati Dev Ani Pujechi Nemnuk Trust (for short 'Trust') has no objection, if the application is allowed.

6. Perused the papers. On 17th November 1997, one Draupadi Dharma Patil whilst doing agricultural work in her landed property bearing Gut No.673 found one box containing gold mask of Lord Ganesha and some jewellery/gold. The said mask of Lord Ganesha was weighing 1305 grams and other gold items were weighing 660.5 grams (Total gold 1965.5 grams). Pursuant to the said discovery, Draupadi Patil handed over the said gold mask and other gold articles to the respondent – Trust. As the said gold articles, given by Draupadi Patil to the trustees, and accepted by the trustees, was in breach of the provisions of the Indian Treasure Trove Act. On 9th December 1997, Mr. Ganesh Bapat, Trustee of the respondent – Trust executed a bond of Rs.10 lakhs alongwith other guarantors before the learned Judicial Magistrate First Class, Shrivardhan.

7. Thereafter, proceedings were conducted under the Indian Treasure Trove Act, 1878 before the learned Collector, Raigad. The learned Collector vide order dated 25th August 1998 declared the said property found by Draupadi Patil and handed over by Draupadi Patil to the respondent – Trust, as 'ownerless'. Admittedly, the said order has not been challenged till date and as such has attained finality. The learned Collector subject to certain terms and conditions gave the said property to the respondent - Trust with specific stipulation stating therein that at all times

the Government shall be the owner of the said property i.e. gold mask of Lord Ganesha and other gold/stone items. Thereafter, the gold mask was installed in the Ganpati Temple at village Diveagar. It appears that for the security of the said mask proper arrangements were made by the respondent – Trust, by installing CCTV cameras and by appointing security guards in the temple.

8. On 23rd March 2012 in the evening, Ashok Sitaram Bhagat, trustee of respondent–Trust closed the temple. At that time, two security guards viz. Mahadev Ghadashi and Anant Bhagat were on night duty. On 24th March 2012, dacoity was committed in the said Lord Ganesha Temple at night and two security guards were murdered and the gold mask and other gold ornaments were stolen by the accused. The said incident came to light on 24th March 2012 in the morning and was immediately reported to the police. Accordingly, a case was registered with the Dighi Sagari Police Station, vide C.R. No.04 of 2012, alleging offences punishable under Section 394 and 397 of the Indian Penal Code. It appears that subsequently Section 396 of the Indian Penal Code was also added. After investigation, charge-sheet was filed against 12 accused, alleging offences punishable under Sections 396, 397 r/w 120B, 201, 379, 412 r/w 34 of the Indian Penal Code and also the provisions of the Maharashtra Control of

Organized Crime Act. It is pertinent to note that during the course of investigation, gold ingots were recovered at the instance of 4 accused i.e. gold ingots and balls weighing 1246.430 grams were recovered, at the instance of accused No.2 – Kailas Bhosale under Section 27 of the Evidence Act; gold ingots weighing 78 grams and gold weighing 12 grams (total 90 grams) were recovered at the instance of accused No.4 – Anand Raimokar under Section 27 of the Evidence Act; gold ingot weighing 10 grams was recovered at the instance of accused No.5 – Ajit Dahale; and, curve shaped gold weighing 15 grams and precious stones weighing 37.50 grams were recovered at the instance of accused No. 9 – Khairabhai Bhosale also under Section 27 of the Evidence Act. The total gold in the temple (including the mask) was 1466 grams and the total gold recovered from the accused was 1361.43 grams and precious stones, 37.50 grams. Admittedly, during trial none of the accused claimed the ownership of the gold ingots and gold as well as precious stones recovered in the said case.

9. The trial Court after considering the evidence on record, convicted 10 of the 12 accused and sentenced them to different punishments vide judgment and order dated 16th October 2017. With respect to the gold which was seized, the learned Judge in clause – 24 of the operative order, has observed thus:-

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Corrected vide order dated 3/5/2021

“24. *The muddemal Article No.19 i.e. gold of 1 Kg. 246 gram 430 miligram, Muddemal Article No.32 i.e. 15 grams of gold sheet and stones fixed in it, Muddemal Article No.33 i.e. 37.500 gram gold and stones, Muddemal Article No. 34 i.e. 10 grams gold, muddemal article No.37 i.e. 78 grams gold ingot, muddemal article No.38 i.e. 12 gram gold ingot recovered from accused Nos.2, 4, 5 and 9 is confiscated and be sent to the Government Mint after appeal period is over.*”

10. It is pertinent to note that during the course of trial, two applications were filed before the learned Special Judge, for return of the property i.e. one application by the trustee - Balkrishna Ganesh Bapat and another application by the trustee – Vijay Sudam Todankar. The learned trial Judge rejected both the said applications on the ground that the said gold mask of Lord Ganesha was owned by the Government as per the provisions of Indian Treasure Trove Act, and the custody of the said mask was given to the respondent – Trust, subject to certain terms and conditions, so that the devotees could worship the gold mask of Lord Ganesha. The learned Judge was of the view that since the accused had melted the said mask and prepared ingots, the said gold mask was not in existence and as such the question of returning the same to the respondent - Trust did not arise and as such rejected both the applications filed by the trustees, seeking return of the property.

11. Being aggrieved by the said order, the respondent – Trust filed the aforesaid appeal being Criminal Appeal No. 217 of 2021, in particular, for the reasons set out by the learned Judge in paras 577 to 583, thereby declining to return the property to the respondent – Trust. The said appeal filed by the respondent – Trust has been admitted by a separate order passed today.

12. The applicant - State of Maharashtra has filed the aforesaid application seeking return of the property described in 'Annexure – A', which is on page 406 of the application and has prayed that the applicant – State be permitted to make gold mask of Lord Ganesha by using the said property and for installing the same in the Ganesh Temple, at Diveagar.

13. According to the learned APP, the Collector, Raigad in 1998 had given the gold mask to the respondent – Trust under the provisions of Indian Treasure Trove Act, 1878 on executing a bond of Rs. 7 lakhs. The learned APP further submitted that the dacoity of the gold mask i.e. of the idol of Lord Ganesha had touched the emotions and feelings of the people residing in the Konkan belt. It is submitted that though the gold mask is not recovered in the same form, the gold of the said mask has been recovered in the form of ingots and that there is public sentiment that similar gold mask

of Lord Ganesha be again prepared with the said gold ingots, which were recovered at the instance of the accused. He submitted that for almost 8 years, after the dacoity which was committed in March 2012, the people are anxiously waiting to see that the gold mask of Lord Ganesha, is reinstalled in the said temple. Learned APP submitted that the applicant intends to make an identical gold mask of Lord Ganesha which was stolen by making use of the same gold recovered from the accused, as stated aforesaid. He submitted that after the gold mask is prepared with the same recovered gold and precious stones, the same will be installed in the temple, after taking a bond from the respondent – Trust. He further submitted that the concerned officer i.e. the Sub-Divisional Officer, Shrivardhan, will supervise the making of the gold mask of Lord Ganesha and that the said officer will ensure that the purity of the gold is maintained as well as the complete usage of the gold and stones so seized. Statement accepted.

14. As noted above, none of the accused have claimed the gold which was seized at their instance. Presently, the gold which was seized from the accused, is lying with the State Government.

15. Learned Senior Counsel for the respondent – Trust states that they will abide by any of terms and conditions that may be imposed by the

State Government before the mask of Lord Ganesha is installed in the temple.

16. Considering the aforesaid, there is no impediment in allowing the application. Accordingly, the following order is passed:-

ORDER

- i) The State Government is accordingly permitted to make a gold mask of Lord Ganesha with the entire gold recovered and seized at the instance of the accused, in the aforesaid case;
- ii) The precious stones which are also seized and recovered will also be used in making of the said mask;
- iii) The purity of the gold to be maintained. The Sub-Divisional Officer, Shrivardhan, to supervise the making of the gold mask of Lord Ganesha and ensure that the purity of the gold is maintained;
- iv) Valuation of the mask with respect to weight and purity to be taken from a Government valuer, after the same is prepared;
- v) After the preparation of the gold mask of Lord Ganesha, the State Government is permitted to hand-over the said mask to the respondent – Trust, who will install the same in the Ganesh Temple at Diveagar, on such terms and conditions, as the applicant – State, deems so fit and proper;

vi) Before the said mask of Lord Ganesha is made, the Sub-Divisional Officer, Shrivardhan, to take photographs of the gold ingots/gold items and precious stones as mentioned in 'Annexure – A', under a pachanama and file the same in the aforesaid appeal;

vii) The Sub-Divisional Officer, Shrivardhan, shall also give an undertaking that in the event, if an occasion so arises and if this Hon'ble Court so directs, the applicant – State will produce the said gold mask before this Court;

viii) The Sub-Divisional Officer, Shrivardhan, to also execute a bond that he will comply with the aforesaid directions, before the trial Court, before the gold is taken from the trial Court.

17. Accordingly the application is allowed. Rule is made absolute in above terms.

18. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.