

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

**WRIT PETITION NO.932 OF 2017**

Vijay V. Joshi ...Petitioner  
Vs  
Aditi Vijay Joshi and Ors. ... Respondents

...

Mr. Archit Sakhalkar i/by Mr. Nihar Suhas Ghag for the  
Petitioner.

Mr. Sanjiv Punalekar with Mr. Sachin Kanse i/by PRS Legal  
for the Respondent No.1.

Smt. M.R.Tidke, APP for the Respondent-State.

**CORAM : SANDEEP K. SHINDE J.**  
**DATED : DECEMBER 07 , 2021.**

**P.C. :**

Heard the learned counsel for the parties.

2           The Family Court at Bandra dissolved the marriage of  
the petitioner with the respondent no.1, under Section 13-B of  
the Hindu Marriage Act, 1955 and accordingly, drawn the  
decree on 2<sup>nd</sup> Day of August, 2007.

3            Clause (8) of the Consent Terms reads as under:

*“8    The Petitioners state that they have agreed to exchange and take in possession of all the jewellery, articles belonging to the Petitioner No.1 from Petitioner No.2 which she has mortgaged without knowledge of the Petitioner No.1, as per the list annexed and marked as Exhibit “E” to instant Petition as per Consent Terms.*

4            On a complaint filed by the petitioner, M.E.C.R. No.01 of 2008 came to be registered against the respondent no.1 under Sections 403, 406, 418, 420, 465, 467 of the Indian Penal Code, 1860. Whereafter, the respondent no.1 was arrested. In the course of the investigation, police seized gold ornaments and silver utensils from Mahavir Devichand Jain and Vijay Mulchand Mehta, both jewellers to whom ornaments and utensils were allegedly sold by the respondent no.1.

5           It appears, the petitioner; respondent no.1 as well as the respondent no.2, all moved applications, under Section 451 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) seeking interim custody of the, ornaments and utensils, pending trial. These applications were rejected. Thereafter in the year 2015, petitioner and the respondent no.1 again moved separate applications under Section 451 of the Cr.P.C. Both the applications were rejected vide order dated 15<sup>th</sup> March, 2016.

6           Petitioner has assailed order, passed in his application.

7           The learned Magistrate declined the interim custody, of the property in question to the petitioner, reason being rival claim set up, by the respondent no.1. In any case, it appears that, in the petition, seeking divorce by mutual consent, parties under Clause (8) have agreed to exchange and take in possession of all the jewellery articles belonging to the husband from the

wife, which she has mortgaged without husband's knowledge as per list annexed and marked Exhibit 'E' to the Consent Terms. That clause is reproduced here-in-above. Apparently, neither the petitioner nor the respondent no.1 had produced the petition for divorce by mutual consent for the perusal of the learned Magistrate

8           In consideration of this fact, if the petitioner moves an application afresh under Section 451 of the Cr.P.C. seeking interim custody of the ornaments and utensils, the learned Magistrate shall consider the application in the light of clause 8, as reproduced, and other relevant clauses of the petition, filed by the petitioner seeking dissolution of marriage by mutual consent.

9           In consideration of these facts, Petition is partly allowed and disposed of, in the aforesaid terms.

**(SANDEEP K. SHINDE,J.)**