

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 217 of 2022

**Rishi Agarwal
Vs.
The State of West Bengal and Anr.**

Mr. Sourav Chatterjee
Mr. Rohan Ojha
...for the petitioner

Item No.29

Heard & Judgment on: 03.11.2022

Bibek Chaudhuri, J.

The petitioner is an accused in connection with G.R. Case No. 87 of 2019 arising out of Mallarpur Police Station Case No.29 of 2019 dated 30th January, 2019 under Sections 498A/406/323/325/354/506/34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act.

Indisputably, charge sheet has been filed against the petitioner and the aforementioned G.R. Case is pending before the learned Additional Chief Judicial Magistrate, Rampurhat. The opposite party No.2 is the wife of the petitioner and the de facto complainant of this case. The de facto complainant remains unrepresented at the time of hearing of the instant revision. The State of West Bengal is represented by Mr. Navanil De, learned P.P.-in-charge.

The petitioner has challenged legality, validity and propriety of an order dated 21st October, 2021 passed by the learned Magistrate in the aforementioned case upon an application filed on behalf of the petitioner praying for return of the seized articles. It appears from the seizure list dated 3rd April, 2019 that as many as 38 items of gold jewellery, some of which studded with valuable stones were seized as 'Alamats' of Mollarpur Police Station Case No.29 of 2019 dated 30 January, 2019, subsequently registered as G.R. Case No.87 of 2019.

The petitioner filed an application praying for return of the seized articles on production of wealth tax receipts of the seized ornaments claiming to be ornaments belonging to the family of the petitioner and not 'Stridhan' properties of the opposite party

No.2. The learned Magistrate refused the prayer for return of the seized ornaments to the accused /petitioner on the ground that he failed to produce any document of ownership in respect of the said ornaments and wealth tax receipts are not documents of ownership of the seized ornaments. It is also recorded by the learned Magistrate that the de facto complainant /opposite party No.2 could not produce any document of ownership in respect of the said ornaments.

It is submitted by Mr. Chatterjee, learned advocate for the petitioner under the above mentioned factual backdrop that the seized ornaments are now lying in police 'Malkhana'. It may be forwarded to the Court 'Malkhana' during trial of the case. According to Mr. Chatterjee, it is not at all safe to keep such valuable ornaments either in police or Court 'Malkhana' and the trial Court is under obligation to take step for proper protection of the seized ornaments. It is also urged by them that the seized ornaments belong to the family members of the petitioner and most of them are acquired long ago and, therefore, it is not possible for the petitioner to produce cash memo etc. in respect of the said ornaments. However, the petitioner and his family members, as the case may be, went on filing wealth tax report

since long way before the initiation of Mallarpur Police Station Case No.29 of 2019. The learned Magistrate failed to appreciate the prayer of the petitioner in proper perspective and wrongly refused to accept the wealth tax receipts in respect of the ornaments.

Learned P.P.-in-charge also submits that the ornaments are required to be kept and protected under proper custody during pendency of the case because the said ornaments are required to be returned by either of the parties on conclusion of trial.

Having heard the learned advocates for the parties and considering the nature of the seized property this Court is of the view that immediate interim protection of the ornaments is absolutely necessary. Therefore, this Court has no other alternative but to set aside the order dated 21st October, 2021 passed by the learned Additional Chief Judicial Magistrate, Rampurhat.

Learned Additional Chief Judicial Magistrate, Rampurhat is requested to rehear the application serving notice to both the de facto complainant and the petitioner within three weeks from the date of communication of this order. He is also directed to

specifically come to a finding as right to the interim protection of the seized ornaments during the pendency of G.R. Case No.87 of 2019 on the basis of the documents that may be filed by the parties before him at the time of hearing of the application.

The instant revision is, accordingly, disposed of with the above direction.

(Bibek Chaudhuri, J.)