

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.162 OF 2021

Devilal Ratanlal Lohar, Age 38 years
R/o.Room No.110, Sukh Shanti Society,
Road No.16, MIDC Andheri (East),
Mumbai-400 093.

Applicant

versus

1. Kamlesh Sohanlal Lohar,
Age 21 years,
2. Sohanlal Lohar, Age 52 years,
3. Rakesh Sohanlal Lohar,
Age 30 years,
All r/o.Room No.2/1, General Arun Kumar
Vaidya Marg, Goregaon (East), Mumbai.
4. Dinesh Ramlalji Purbiya, Age 26 years,
R/o.M & P.Dhaliya, Tal.Nath Dwar,
Dist.Rajsamand, Rajasthan State.
5. The State of Maharashtra.

Respondents

Mr.Vinod Kashid, Advocate for Applicant.
Mr.Abdullah F. Cutlariwala with Mr.Ankit Pandey, Advocate for
respondent nos.1 to 3.
Mr.A.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd June 2022

PC :

1. The applicant is aggrieved by order dated 10th December 2019 and 19th December 2019 passed by Sessions Court in Sessions Case No.169 of 2019.

2. The applicant is the owner of jewellery shop at Subhas Nagar, Rebello Compound, MIDC, Andheri (East), Mumbai. The respondent no.1 was working in the said shop. Another person Indersingh

Rajput was also working in said shop. The applicant went to his native place on 28th April 2018. Keys of the shop were handed over to respondent no.1. Various gold ornaments were lying in the shop. On 4th May 2018, the applicant received a call that there is robbery in his shop. The ornaments from shop were taken away. The applicant returned to Mumbai. Respondent no.1 had lodged the FIR against unknown persons on 5th May 2018 u/s.394, 328, 34 of IPC. During the course of investigation involvement of respondents was disclosed. Respondent nos.1 to 4 were arrested. Gold ornaments were recovered.

3. The applicant preferred application u/s.457 of Cr.PC for return of property viz gold ornaments of 7 kilogram and 94.500 miligram valued approximately at Rs.1,84,45,700/- seized in crime no.210 of 2018 registered with MIDC Police Station before the Court of Additional Chief Metropolitan Magistrate, 22nd Court, Andheri, Mumbai. The applicant contended that he is the owner of ornaments seized by police. The respondent nos.1 to 3 filed say and opposed the application contending that some persons had mortgaged jewellerys with them and the gold ornaments belonging to them were seized by police. The learned Magistrate vide order dated 6th June 2019 observed that the record of the case has been sent to Sessions Court at the time of committal. In the absence of final report it is difficult to decide interim custody of ornaments.

4. Applicant preferred another application vide Exhibit-3 for return of property i.e. gold ornaments of 7.094 kgs before Sessions Court. Prosecution and accused no.2 filed say. Prosecution gave no objection for release of articles on conditions. Vide order dated 14th

October 2019 the Court directed that the persons named Pankaj Mahaveer, Vanechand Jain, Bharatkumar Jain, Rameshkumar Acharya and Prakash Badana's say are necessary from whose possession some of the golden ornaments in the form of fine gold are seized. Accordingly Bharatkumar Jain and Rakesh Kumar Acharya filed affidavit that they have no objection to release the said gold in favour of the applicant and they will not claim the same in future. Vide order dated 10th December 2019 it was observed that say of the prosecution reveal that from shop owned by Bharat Kumar Jain 200 gms biscuits of gold and from Rakesh Kumar Acharya 200 gms two biscuits of gold were recovered. In view of no objection of prosecution and affidavit of Bharatkumar Jain and Rakesh Kumar Acharya, the aforesaid articles can be released. The Court released 200 gms each gold fine biscuits recovered from Bharat Kumar Jain and Rakesh Kumar Acharya to be returned to applicant on bond on usual conditions. The application was kept pending.

5. The applicant's application Exhibit-3 for return of property before Sessions Court for return of gold ornaments of 7.094 kg was heard again. Accused no.3 Sohanlal Lohar filed application for releasing 2300 gms gold jewellery. The prosecution had filed say to the application submitted by applicant and gave no objection to release the ornaments to applicant. However, prosecution raised objection to application of Sohanlal Lohar. The learned Sessions Judge vide order dated 19th December 2019 observed that originally report was lodged by Kamlesh Lohar alleging robbery of gold ornaments worth Rs.8,28,000/- and cash of Rs.45,000/-. Later on Devilal Lohar (applicant) who is the owner of Mahavir Jewellers informed the police about robbery of 4 kgs gold ornaments. Devilal

had handed over shop to accused Kamlesh and Inder on 29th April 2018 and alleged incident had occurred on 4th May 2018. Hence Kamlesh and Inder were in better position to report about actual stock of gold on the date of incident. Accused are also running jewellery shop by name Bhairav and it appears that panchanama was carried out at the shop of accused. In view of no objection of Mahesh Jain and Pankaj Sancheti Jain, at this stage case is made out for release of gold ornaments or gold biscuits seized from them to applicant. However, so far as the remaining gold is concerned at this stage it is not proper to release the same in favour of applicant. There is dispute about 2300 gms gold jewellery as both applicants are claiming custody. If during the course of evidence, the applicant Devilal Lohar succeed to prove the documents and ultimately his ownership over the seized remaining gold, in that event he has liberty to file fresh application for release of gold. Sohan Lal is accused. Prosecution opposed to release seized gold ornaments in favour of Sohanlal Lohar as according to prosecution it is stolen property. Therefore there is no substance in claim of Sohanlal Lohar, Application Exhibit-3 was partly allowed. Gold biscuits seized from Mahesh Vanichand Jain and Pankaj Sancheti be released in favour of applicant Devilal Lohar on executing indemnity bond. Application Exhibit-21 preferred by Sohanlal was rejected.

6. Learned advocate for applicant submitted that applicant is the owner of property recovered during investigation. He is in possession of relevant documents relating to the possession of gold ornaments. Petitioner had filed income tax returns for the years 2017-18 and 2018-19 which shows that before the alleged incident he was having 10 kgs opening and closing stock of gold ornaments in

his shop. All the gold ornaments were recovered from Respondent nos.1 and 3 under memorandum panchanama during their custodial interrogation and some of the gold ornaments were recovered from the field of accused. Accused no.1 was working in the shop of applicant no.1 and initially he lodged the FIR alleging robbery. Respondents are not entitled for property recovered during investigation. There is no claim from any accused over 5 kgs ornaments and claim of accused is only in respect of 2 kgs 300 gms ornaments for which accused nos.2 and 3 had filed application Exhibit-21 for return of property which was rejected by Sessions Court. This applicant has claim over the property.

7. Respondent no.1 has filed reply opposing reliefs sought in this application. Learned advocate for Respondent nos.1 to 3 submitted that claim of the applicant is false. The recovered property was not from the shop of applicant. Identification of the articles is impossible. There are rival claims of the parties in respect to the recovered articles which can be issued at the time of trial. The FIR was filed at the instance of respondent no.1. However, during investigation respondent nos.1 to 4 were arrested. They were subsequently released on bail. The muddemal property should not be released in favour of applicant.

8. Learned Sessions Judge has allowed the application for return of property in respect to other articles. The robbery was committed in the shop premises of applicant. Prima facie there is reason to believe that articles belongs to applicant. Applicant has claimed interim custody of articles. After accused were arrested and during the course of investigation the gold ornaments were recovered. The

dispute is about gold ornaments weighing 2300 gms which is claimed by accused. The prosecution had given no objection for releasing property to applicant. Learned APP submitted that the prosecutor's stand is clear from say filed before Sessions Court. Considering the circumstances, gold ornaments weighing 5.794 kgs can be released to applicant as interim custody. Prima facie applicant has better claim and hence on usual terms and conditions the gold ornaments as can be aforesaid returned to the applicant by way of interim custody.

ORDER

- (i) Criminal Revision Application No.162 of 2021 is allowed;
- (ii) The impugned order dated 19th December 2019 passed by the Additional Sessions Judge, Dindoshi, Mumbai, is set aside;
- (iii) The investigating officer is directed to hand over the gold seized during the investigation of the case weighing 5.794 kgs to the applicant on executing requisite bond before the Trial Court;
- (iv) The applicant shall not alienate the property to any other person;
- (v) The applicant shall produce the said property as and when directed by the Court;
- (vi) The applicant shall not change the form of property handed over to him;
- (vii) Revision Application stands disposed off accordingly.

(PRAKASH D. NAIK, J.)