

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

CRIMINAL WRIT PETITION NO.524 OF 2022

Gokul Undrya Naik
Aged 63 years, Occ. Powerloom,
Residing at Near Water Tank,
Karivali Village, Bhiwandi,
District - Thane

.... Petitioner

versus

1. The State of Maharashtra
(At the instance of Bhoiwada Police Station,
Bhiwandi)
2. Mahavir Kisanlal Kothari
Aged 29 years, Occ. Jewellers,
Residing at Space Height,
"A" Wing, Room No.201,
Valiv, Tal. Vasai,
District Palghar

AND

Having shop at Nakoda Jewellers,
Valiv Naka, Sonar Lane, Valiv,
Taluka Vasai, Dist. Palghar.

3. Pramod Kisanlal Kothari
Aged 45 years, residing at
201, Space Heights,
Near Ganpati Temple, Valiv,
Vasai (E), District Palghar

.... Respondent

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**WITH
CRIMINAL WRIT PETITION NO.2473 OF 2022**

Pramod Kisanlal Kothari
Aged 45 years, Occ.: Business/Jeweller,
Proprietor of Nakoda Jewellers
R/o. 201, Space Heights,
Near Ganpati Temple, Valiv,
Vasai (E), District Palghar

.... Petitioner

versus

1. State of Maharashtra
Through Public Prosecutor
For Bhoiwada Police Station,
2. Gokul Undrya Naik
Aged 62 years, Occ. Powerloom,
R/O. Near Water Tank,
Kariwali Village, Bhiwandi,
Dist. Thane

.... Respondents

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- Mr. M. K. Kocharekar, Advocate for Petitioner in WP/524/22.
- Mr. Tushar Sonawane, Advocate for Petitioner, in WP/2473/22 and Advocate for Respondent Nos.2 and 3 in WP/2473/22.
- Mrs. J. S. Lohokare, APP for the State/Respondent.
- PSI – Suresh Ghuge – Bhoiwada Police Station, Bhiwandi.

CORAM : M. G. SEWLIKAR, J.
DATE : 21st JULY, 2022

ORAL JUDGMENT :

1. Rule in both the Writ Petitions.
2. Both the Writ Petitions are taken up for final hearing with the consent of the parties.

3. These are the Petitions for interim custody of golden ornaments alleged to be stolen from the possession of the accused by the name of Dhanashree Patil.

4. Facts can be succinctly stated thus -:

As per the contentions in the FIR accused Dhanashree Patil is the daughter of the sister-in-law of the informant. She stayed with the informant for two days. On 07/11/2020 accused Dhanashree left the house of the Petitioner. The Petitioner checked his cupboard and noticed that a Ganthan, a Bracelet and golden chain were missing. He, therefore, lodged a report on 22/01/2021 stating therein that golden ornaments worth Rs.4,50,000/- described in the FIR were stolen. On these allegations, an FIR came to be lodged.

5. After completion of investigation, charge-sheet came to be filed against the accused Dhanashree Patil.

6. During the pendency of the Criminal case, the Petitioner (informant) filed application for getting interim

custody of the stolen ornaments. Respondent No.2 also filed an application for getting interim custody of the stolen ornaments. It is the contention of the Respondent No.2 that the accused Dhanashree had been to his shop by the name of Nakoda Jewellers. She sold those ornaments to Respondent No.2. Respondent No.2 passed the receipt to that effect also. According to Respondent No.2 he had no knowledge that the articles were stolen property.

7. Learned Judicial Magistrate First Class, Bhiwandi, rejected the application holding that rival claims are made and during the pendency of criminal case issue of ownership cannot be decided. Holding thus, he rejected both the applications. Both the Petitioner (informant) and Respondent No.2 preferred Revision Applications. Both the revisions were dismissed by the learned Additional Sessions Judge, holding that the learned Magistrate correctly decided that the ownership at this stage cannot be determined. Aggrieved by this order, both the Petitioners and Respondent No.2 preferred Writ Petitions. Writ Petition No.524 of 2022 is preferred by the Petitioner/original

informant and Writ Petition No.2473 of 2022 is preferred by the Respondent No.2 the receiver of the stolen property.

8. Learned counsel for the Petitioner in Writ Petition No.524 of 2022 submitted that at this stage the issue of ownership needs to be decided by the Court. He submitted that the Petitioner (i.e. the informant) has produced the receipt showing purchase of ornament from Mahalaxmi Jewellers. According to learned counsel, the Petitioner Gokul Naik is the rightful claimant and therefore he is entitled to the interim custody. He submitted that the Hon'ble Supreme Court has held that the issue of custody needs to be decided expeditiously especially when it is gold. For this purpose he relied on the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, as reported in *(2002) 10 Supreme Court Cases 283*.

9. Learned counsel for Respondent No.2 (Petitioner in Writ Petition No.2473 of 2022) submits that his claim stands on better footing than that of the Petitioner/the informant. He submits that the accused Dhanashree is his regular customer.

She had sold ornaments to him. At that time, Respondent No.2 did not have any knowledge that the said golden ornaments were the stolen properties. He submits that the Respondent No.2 issued a receipt also. Therefore, he is entitled to the interim custody of the golden ornaments.

10. Both the Courts have correctly held that when there are rival claims as regards to the ownership of the property, it cannot be decided at this stage. It can be decided only after the conclusion of the trial. So far as the judgment in the case of Sunderbhai Desai (supra) is concerned, the Hon'ble Supreme Court has observed in paragraph No.12 thus;

“12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after;

- (1) preparing detailed proper panchanama of such articles;*
- (2) taking photographs of such articles and a bond*

*that such articles would be produced if required
at the time of trial; and
(3) after taking proper security.”*

11. The observations in paragraph No.12 clearly indicate that if there is evidence to show that articles belong to the complainant, then it shall be returned to him. Only after recording evidence it will be clear who has better title to the Muddemal property. Pending trial, this issue cannot be decided. In this view of the matter, I do not find any infirmity in the order passed by both the Courts. Hence both the Writ Petitions are devoid of any substance. Both the Writ Petitions are therefore dismissed. Rule is discharged.

12. Both the learned counsel made a request for expeditious disposal of the trial. Learned Trial Court is therefore directed to conclude the trial within a period of six months.

13. Both the parties to co-operate the Trial Court for disposal of the criminal case.

(M. G. SEWLIKAR, J.)