

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

**INTERIM APPLICATION NO. 1144 OF 2021
IN
CRIMINAL APPLICATION NO. 317 OF 2019**

Mr.Mitesh Motilal Rathod ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Ms. Fenila N. Nair for the Applicant.
Mr. K.V. Saste, APP for the State.
Mr. Satyanarayanan for Respondent No.2.

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**CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED : 4 AUGUST 2022

P.C. :-

Heard learned Counsel for the parties.

2. This interim application is taken out in disposed of criminal application no. 317 of 2019. By order dated 6 October 2020, the Division Bench allowed the application filed by Respondent No.2 herein and quashed the FIR filed by the present Applicant. Thereafter, the Applicant had approached the Metropolitan Magistrate, 28th Court, Esplanade, Mumbai for return of the property, namely, gold. By order dated 30 December 2020, the learned

Metropolitan Magistrate disposed of the application referring to the order passed by this Court and pendency of the criminal revision application before the Sessions Court. The Applicant had approached the learned Single Judge against the impugned order, who opined that the matter be moved before the Division Bench.

3. The learned Counsel for the parties, that is, the original Complainant and Respondent No. 2 herein are *ad-idem* that there is no impediment now for the Complainant to receive the property as sought for. Even the learned APP states that the learned Metropolitan Magistrate can pass appropriate order as per law as the proceedings have been quashed. As regard the pending criminal revision application referred in the impugned order, it has been pointed out to us that it has been withdrawn. We are informed that no proceedings are pending in any court at present.

4. Thus, we find no impediment for the learned Metropolitan Magistrate to pass an order on the application for return of the property made by the present Applicant/ Complainant.

5. Accordingly, the order dated 30 December 2020 passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai is quashed and set aside and the application of the Applicant/Complainant is restored to file. The learned Magistrate to

deal with the application as per law and pass appropriate order.

6. Considering the fact that the proceedings are pending for some time, the learned Metropolitan Magistrate will make an endeavour to dispose of the application early.

7. The interim application is disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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SADANAND
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