

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

CRIMINAL WRIT PETITION NO.1114 OF 2022

Samarth Viman Jagnani .. Petitioner
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Dinesh Tiwari a/w. Mr.Mihail Dey, Mr.Tanmay Karmarkar i/b. M/s.
Dinesh Tiwari & Associates, Advocate for the Petitioner.

Mr.Arfa Sait, APP for the Respondent No.1-State.

Mr.A.M. Saraogi, Advocate for Respondent No.2.

PSI Vilas Tambe, Dindoshi Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 28, 2022.

P.C. :

The petitioner had challenged the order dated 29th March, 2022, passed by learned Metropolitan Magistrate 67th Court Borivali, Mumbai allowing the application preferred by respondent no.2 for return of articles recovered by police vide panchanama dated 8th February, 2018.

2 Respondent no.2 had lodged FIR for the offences punishable under section 498-A, 406, 354-A read with 34 of Indian

Penal Code ("IPC", for short). During the course of investigation, panchanama for seizure was recorded on 8th February, 2018, which refers to recovery of several articles including the ornaments. Respondent no.2 preferred an application before the learned Magistrate for return of the said articles. The application was opposed by the applicant by filing reply and also advancing oral submissions. Learned Magistrate allowed the interim custody of articles recovered by Dindishi police station under panchanama dated 8th February, 2018 in C.R. No.59 of 2018, to Respondent no.2 on execution of Supratnama of Rs.1 crore on a condition that the respondent no.2 shall produced the same as and when required by them during the trial and shall not change, sell or transfer etc., till the disposal of the case.

3 Learned advocate for the applicant submitted that the articles were more than crores of rupees were directed to be handed over to respondent no.2 without conducting any inquiry. Respondent no.2 has not produced any documents except two receipts in support of his claim for return of said articles. Respondent no.2 has lodged several complaints against the applicant with a view to harass. Learned Magistrate has mechanically allowed the application preferred by respondent no.2 without ascertaining the ownership of the articles. There is difference between the articles mentioned in the

FIR and those recovered under panchanama. There is no documentary evidence to support the ownership of respondent no.2. It is also not discarded that the articles were Streedhan of respondent no.2. Some of the jewellery belongs to the mother of the applicant. There is no identification of the articles. It would appropriate to conduct inquiry before the articles could be either handed over to either party. The said articles may be directed to be kept in bank locker with the directions to the police to conduct any inquiry about the ownership of the articles. The said applicant had preferred an application for setting aside of the execution of the impugned order before the trial Court. Hence, the impugned order may be set aside.

4 Learned APP submitted that the learned Magistrate had granted interim custody of the articles to respondent no.2. The applicant had also not produced any documents . No application was preferred by applicant for return of the said articles. The reply filed before the trial Court is contrary to the submissions before the Court. There is no point in keeping the articles in the custody of the police. The trial Court may impose requisite conditions while allowing the application for return of property.

5 Learned counsel for respondent no.2 submits that there

is no illegality in the order passed by the learned Magistrate. The value of the property is mentioned in the panchanama. He pointed out the manner in which the seizure was conducted by relying on the contents of the panchanama. The complainant has made grievance that the recovery is incomplete. The articles were directed to be return to respondent no.2 on conditions to produce them before the concerned Court as and when required.

6 Undisputedly, respondent no.2 had lodged FIR with Dindoshi police station on 25th January, 2018, vide C.R.No.59 of 2018, under Section 498-A, 406, 354-A read with 34 of IPC. In the FIR, it has been stated that the articles belonging to respondent no.2 were retained by the accused. The FIR also mentions the description of the articles belonging to respondent no.2. The value of articles is stated to be more than rupees one crore in the FIR. The panchanama of seizure dated 8th February, 2019 indicate the value of the articles recovered as Rs.67,13,867/-. The contention of the petitioner is that the value of the articles is more than crores of rupees. It is also pertinent to note that the learned Magistrate while allowing the application preferred by respondent no.2 has observed that the applicant has not produced any documents to support his claim. It is also pertinent to note that there is no application for return of property by the applicant before the trial Court. By imposing conditions, as reflected in order dated 29th

March, 2020 of executing Supratnama of Rs.1 crore, the property is being secured. The learned Magistrate also directed that respondent no.2 to produce the property as and when required by the Court during the trial and not to change, sell, transfer etc., the said property till the disposal of the case. It is pertinent to note that although the value of the property is reflected in the panchanama is less than one crore, the respondent no.2 has been directed to execute the Supratnama for an amount of Rs.1 crore.

7 Considering the factual matrix of the case, no ground is made out to set aside the impugned order passed by the learned Magistrate.

8 Writ Petition is dismissed.

9 At this stage learned counsel for the petitioner submits that this order may be stayed for a period of four weeks. The request is rejected.

10 The observations made in this order are only for adjudicating the present proceedings and the trial Court shall not be influenced by it during trial.

11 The trial is expedited. Trial Court shall make an
endeavour to complete the trial within a period of two years from
today.

12 Writ petition stands disposed of accordingly.

(PRAKASH D. NAIK, J.)