

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1065 OF 2021**

Hetali Ritesh Maniyar ...Applicant
Versus
The State of Maharashtra and Ors. ...Respondents

Mr. Rajendra Sorankar, Advocate for Applicant.

Mr. Sanjiv Sawant a/w Mr. Pankaj Kode a/w Mr. Heramb Kadam a/w
Ms. Ishita Pokle i/by Mr. Abhishek Deshmukh, Advocate for Respondent
Nos. 2 to 4.

Mr. A. R. Patil, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th AUGUST, 2022.

P.C. :-

1. The Applicant is original complainant in First Information Report (for short 'FIR') No.I-139 of 2007 registered for an offence under Sections 498-A, 406, 323, 504 r/w 34 of Indian Penal Code (for short 'IPC') against Respondent Nos. 2 to 4.

2. On completing investigation charge-sheet was filed before the Court of Judicial Magistrate First Class, Thane and the proceedings were numbered as Regular Criminal Case No. 611 of 2007.

3. The Respondent Nos. 2 to 4 were tried in the aforesaid proceedings before the said Court and vide Judgment and order

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dated 5th November, 2016, they were acquitted of all the charges. While acquitting the Respondents it was directed that the ornaments and articles spelt out in column no. 10 of the charge-sheet bearing no. M-77/07 and M-86/07 be returned to Accused No.1.

4. The Judgment of acquittal dated 5th November, 2016 was challenged by the State before the Court of District Judge-7 and Additional Sessions Judge, Thane vide Criminal Appeal No.6 of 2017. By Judgment and order dated 4th September, 2019 passed by learned Additional Sessions Judge, Thane the appeal was dismissed.

5. The Senior Inspector of Police, Vartak Nagar Police Station issued a letter dated 7th October, 2021 to the Applicant directing her to deposit Muddemal articles with Police Station in accordance with Judgment and order dated 5th November, 2016 passed by trial Court. The said letter also mentioned that the articles mentioned therein were given by way of custody vide order dated 30th November, 2007 passed by the Court. Since the Accused are acquitted the Court had directed to return the articles to Accused No.1. The description of articles provided in the said letter referred to one mangalsutra, gold necklace, two ear rings, golden rings,

necklace, two ear rings, necklace, two ear rings, gold bangles and silver ornaments.

6. The Accused No.1 preferred an application before the Court of learned J.M.F.C. on 26th July, 2021 seeking directions to recover Muddemal property as mentioned in property registered no.M-77/07 from the complainant and said property to be handed over to Accused No.1. Learned Magistrate directed APP to file say. The Court also passed order to report as to whether the informant or prosecution has challenged the Judgment of dismissal of appeal before the Hon'ble Bombay High Court and if there is any stay order in respect of Muddemal return order.

7. The Accused No.1/Respondent No.2 filed pursis before the Court of J.M.F.C., Thane stating that the Judgment of acquittal dated 5th November, 2016 was challenged by the State before the Sessions Court by preferring appeal which has been dismissed on 4th September, 2019. The said order has not been challenged by the wife of Accused No.1 or by State.

8. The learned Magistrate vide order dated 6th September, 2021 recorded that the Judgment of the Sessions Court dismissing appeal preferred by the prosecution is not challenged in the High

Court and thus the Judgment passed by the trial Court in R.C.C. 611 of 2007 has become final. As per the order passed by trial Court ornaments, articles spelt out in column no. 10 of charge-sheet bearing property registered no. M-77/07 and M-89/07 be returned to Accused No.1. The Sessions Court has confirmed the order of trial Court. The Accused No.1 had preferred application to direct recovery of said Muddemal handed over to informant as interim custody. It was further recorded that the Court do not find it necessary to call for say of informant since the order of Muddemal is passed. The Investigation Officer was directed to recover the Muddemal as per Judgment in R.C.C. No.611 of 2007 from informant and hand over the same to Accused No.1 after verifying the same.

9. The Applicant has challenged the order dated 5th November, 2016 and 6th September, 2021.

10. Learned Advocate for Applicant submitted that the Applicant is constrained to approach this Court in extreme urgency. Since the trial Court had directed Respondent No.1 to recover the articles seized on 9th April, 2007 and 6th May, 2007 by the Investigating Officer during the investigation and the trial Court vide order dated 6th September, 2021 directed to hand over the

recovered Muddemal to Respondent No.2/Accused No.1. The Applicant has no remedy to challenge the trial Court orders dated 5th November, 2016. The Applicant has invoked the inherent powers under Section 482 of Cr.PC. to challenge the order dated 5th November, 2016 with limited aspect of stridhan jewelries. The trial Court or appellate Court did not issue notice to the Applicant over stridhan and no hearing was given to her in respect to the property seized during investigation. Gift articles given to bride at the time of marriage becomes stridhan and she has exclusive right over it. Vide order dated 6th October, 2021 the Applicant is directed to deposit the jewelry articles mentioned in the said letter. Thereafter the Applicant made inquiry with the Police and approached the trial Court for seeking reliefs. The learned APP had filed reply stating that notice be issued to complainant. However, the trial Court without giving opportunity to Applicant directed Respondent No.1 to recover the Muddemal (stridhan) from Applicant's custody and hand it over to Respondent No.1. The Applicant had provided sufficient material to Respondent No.1 about source of ornaments given by her parents. The trial Court ignored the material on record and the admitted position on the part of Accused about there no objection to hand over jewelries as per recovery panchanama dated 19th April, 2007. While dealing with the stridhan the Applicant

ought to have been heard by the Courts.

11. Learned Advocate for the Applicant has relied upon the following decisions ;

i. Rashmi Kumar (SMT) V/s. Mahesh Kumar Bhada, (1997) 2 SCC 397.

ii. Pratibha Rani V/s. Suraj Kumar and another, AIR 1985 Supreme Court 628.

iii. Jagjeet Singh & Ors. V/s. Ashish Mishra @ Monu & Anr., decided by Supreme Court in Criminal Appeal No.632 of 2022 dated 18th April, 2022.

iv. Mevaldas Takhatmal Lekhawani V/s. State of Maharashtra, 1982 CRI. L. J. 46.

12. Learned Advocate for Respondent Nos.2 to 4 submitted that the Respondents were tried for the aforesaid offences and acquitted by the trial Court vide Judgment dated 5th November, 2016. The acquittal was confirmed by the Sessions Court vide Judgment dated 4th September, 2019. Thus, the Respondents were exonerated of charges of cruelty and misappropriation of ornaments. The trial Court directed that the articles be handed over to Accused No.1. The first informant had participated in the

proceedings before the trial Court as a witness. She did not challenge the Judgment of the trial Court as well as appellate Court. Both the orders had attained finality. Since the jewellery articles were in possession of the Applicant, The Respondent No.2 preferred an application seeking direction to the Police to recover the articles in possession the Applicant for being handed over to Respondent No.2. The prosecution had failed to establish that the said articles belong to first informant and the Accused were acquitted of all the charges. The trial Court has also directed that the gold bar recovered during the investigation be handed over to Respondent No.2. The said article was handed over to Respondent No.2 during the trial by way of interim custody. The Applicant has belatedly preferred this application challenging the orders passed by the Court below. Hence, the application preferred by the Applicant may be rejected.

13. It is not dispute that the Respondent Nos. 2 to 4 were tried for the offence under Section 498-A, 323, 406, 506 r/w 34 of IPC. Vide Judgment and order dated 5th November, 2016 passed by learned J.M.F.C. 2nd Court, Thane they were acquitted. As per clause 3 of operative part of order dated 5th November, 2016, the ornaments, articles spelt out in the column no.10 of the charge-

sheet bearing property registered no. M-77/07 and M-86/07 were directed to be returned to Accused No.1/Respondent No.2. He is the husband of first informant/Applicant. In paragraph 16 of the aforesaid Judgment the trial Court had observed that the Accused had denied any existence of stridhan of informant much less its entrustment. Unless prosecution discharge the burden to prove the ownership of informant, mere recovery of ornaments/articles as narrated in seizure memo (Exh.65) and Japti Panchnama dated 6th May, 2007 wherein ingot came to be seized from Accused No.1 would be insufficient to prove offence under Section 406 of IPC. Except bald words no documentary proof showing purchase of gold by PW-2 or parents of informant were produced. The ownership regarding gold ornaments and silver articles is not proved. There is no proof of entrustment. Thus, there is no evidence to prove charge under Section 406 of IPC. The appeal preferred by the State was dismissed vide Judgment and order dated 4th September, 2019. The appellate Court had observed that there is nothing on record to indicate that the complainant had demanded stridhan from Accused and it was not returned to her. If the stridhan was in custody of the Accused the complainant had all the opportunity to ask for the same.

14. I have perused Japti Panchnama dated 19th April, 2007. The document was exhibited in evidence. The said document indicate that the Accused No.1 while on interim bail handed over the ornaments amongst the stridhan. The Panchanama was executed with regards to recovery of necklace, ear rings, finger ring, silver article, mangalsutra, gold bangles, gold necklace, ear rings and necklace set worth about Rs.1,15,500/-. Japti Panchanama dated 6th May, 2007 is also part of record. It relates to seizure of gold bar at the instance of Accused No.1.

15. The Applicant/first informant had preferred Miscellaneous Application No.148 of 2007 before the trial Court for return of property. The Applicant had prayed for the return of ornaments such as gold necklace, ear rings, finger ring, silver articles, gold bangles, gold necklace, ear rings and necklace of gold with Zumka worth of Rs.5,79,825/-. The Applicant also prayed for the return of gold lagad weighing 500 gms worth Rs.5,79,825/-. The prosecution filed say stating that the articles are stridhan of the first informant and the prosecution has no objection for handing over those articles by way of interim custody to the Applicant/first informant on terms and conditions. The Respondent Nos. 2 to 4 filed reply dated 29th May, 2007 before the trial Court and stated that they

have no objection to hand over the articles mentioned in seizure Panchanama dated 19th April, 2007 to the complainant. However, they have strong objection over granting orders of handing over the articles under seizure Panchanama dated 6th May, 2007 being a gold square lagad weighing approximately 500 gms.

16. Thus, the Respondent Nos. 2 to 4 had given no objection for handing over the articles/ornaments seized vide seizure Panchanama dated 19th April, 2007 and at the same time had objected for handing over the gold lagad seized vide Panchanam dated 6th May, 2007.

17. Vide order dated 19th November, 2007 the learned Magistrate recorded that the complainant had prayed for release of articles A to E mentioned therein. Whereas the Accused No.1 has prayed for return of gold bar weighing 500 gms contending that he had purchased during the investigation to avoid his custody. He has given no objection to release articles at serial no. A to E as claimed by complainant. There is no dispute about articles serial no. A to E and hence the said article be returned to complainant on execution of bond. The Accused filed purchase receipt and the loan document for purchase of gold bar. Per-contra the complainant has not filed any document to show that she has purchased the

same or how she came in possession of the same. The said gold bar was seized from the Accused vide Panchanama dated 6th May, 2007 and the receipt about the purchase of the same filed by him is also dated 6th May, 2007. The Accused had also informed the police that he had purchased the gold bar. Therefore, there is substance in his contention which is justified by the documents. Hence taking into consideration, the fact, it would not be proper to return the gold bar to complainant. At this stage the custody of the same would not be justified to the complainant as well as Accused as both the parties are claiming the same and hence the prayer for custody of gold bar is rejected for both the parties.

18. It is evident that the gold articles were directed to be handed over to the complainant and although the Accused No.1 had furnished document to show that the gold bar was purchased by him on account of claim by both sides, the custody was denied. The Accused are acquitted and the acquittal has been confirmed by the appellate Court. The custody of the gold articles directed to be handed over to the complainant in accordance with order dated 19th November, 2007 is with the Applicant. Undisputedly, the Respondent No.2 to 4 had given no objection. Assuming that the Accused were acquitted for the offence under Section 406 of IPC,

the articles in the nature of stridhan cannot be denied to the wife/first informant. However, the Applicant/first informant has not produced any document before the trial Court to establish her claim on the gold lagad which is evidently purchased by Accused No.1 and hence the custody of gold bar/lagad deserves to be given to the Accused No.1. The charge under Section 406 of IPC relates to retention and misappropriation of the property entrusted with the Accused. Assuming that the property was not misappropriated, it was recovered during the investigation as stridhan and handed over to the complainant on the basis of no objection given by the Accused and the seizure Panchanama recorded during the investigation. In the interest of justice and on exercising of inherent powers under Section 482 of Cr.P.C. it needs to be directed that the Applicant/first informant shall continue to retain the custody of the articles which were handed over to her by way of interim custody during the trial. However, she is not entitled for custody of gold bar which was also recovered during the investigation.

19. Hence, I pass the following order;

ORDER

- i. Criminal Application No. 1065 of 2021 is partly allowed;
- ii. The impugned order dated 5th November, 2016 passed by learned J.M.F.C. II Court, Thane in RCC No.611 of 2007 and order dated 4th September, 2019 passed by Additional Sessions Judge, Thane in Criminal Appeal No.6 of 2017 directing applicant to handover ornaments/articles spelt out in Column No.10 of charge-sheet bearing property Register No. M-77/07 which is seized vide Japti Panchanama dated 19th April, 2007 to accused No.1 is set aside. The applicant is entitled for possession of said ornaments/articles.
- iii. The ornaments/articles referred to in clause (ii) of this order, which are already handed over to applicant by way of interim custody shall be retained by applicant and need not be handed over to accused No.1.
- iv. The prayer for returning the property reflected in Register No. M-86/07 which subject matter of Japti Panchanama dated 6th May, 2007 relating to Gold Lagad to the applicant is rejected.
- v. The direction to handover said property (Gold Lagad)

to accused No.1/ Respondent No.2 issued vide order dated 5th November, 2016 is confirmed.

vi. Criminal Application No.1065 of 2021 is disposed off.

[PRAKASH D. NAIK, J.]