

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

28 CRIMINAL APPLICATION NO.459 OF 2023

**RATANLAL C. BAFNA JEWELLERS, AURANGABAD THROUGH
ITS MANAGER VINODKUMAR S/O. DILIP SING JAIN
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Ajit Manohar Gholap, Advocate for the petitioner
Mr. S. R. Yadav-Lonikar, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 17th MARCH, 2023

P. C.

1. Heard the learned advocate for the parties at length.
2. The applicant is challenging an order passed by the learned JMFC, Aurangabd dated 18-11-2021 in Criminal Misc. Application No. 2141/2019. The learned court by way of the order has refused to pass direction under Section 156(3) of the Code of Criminal Procedure.
3. The applicant is proprietorship concern and dealing with the business of jewelry. Initially applicant filed a complaint

with the Satara Police Station, Aurangabad through its Manager. It is stated that one Yogesh used to visit the jewelry shop and on some occasions he sold the gold jewelry /gold to the jewelers and has taken amount towards same by showing his I-card as he is working in the police department. Since said person was working in the police department there was no reason to suspect his bonafides. Therefore, he was paid the amount of gold that was sold in the shop as per the market rate. However, shockingly thereafter the police took this Yogesh to the shop on 18-10-2018. He was brought as an accused as he was caught for the offences of chain snatching etc on the basis of complaint filed by the Rekha Kakade staying in Satara Parisar, Aurangabad. It was later on revealed that the prosecution was started against said Yogesh on the basis of complaint lodged by one Rekha. The police seized from the applicant ingots equal to the weight of the gold of the chain accused snatched. Thus, now the amount towards gold is paid by the applicant to said Yogesh and police have also seized the gold equal to the gold that was sold by Yogesh to the applicant. It is the applicant who is also cheated

and it is for this reason the complaint came to be lodged on 10-06-2019.

4. However, police did not take any action on the complaint also and letter sent to the Superintendent of Police under Section 194(3). However, no action was taken even by the Superintendent of Police and therefore, criminal Misc. Application was filed. In case the complaint lodged on the basis of complaint made by the ladies, the applicant filed an application under Section 457 for return of gold. The informant in those case also filed application under Section 457 as the gold was snatched from her. The learned court in that case returned the gold to the informant. Thus as on today, the applicant has paid money towards gold and that gold is also seized by the police and now given to those ladies. It is thereafter, Cri. Misc. Application came to be filed. The learned court below though has observed that allegations in the complaint make out a case under Section 420 of the IPC, however has stated that he got knowledge about the stolen gold on 18-10-2018. However, he

lodged report on 10-06-2019 after 8 months and there is no explanation for such delay. It is further observed that there is nothing to be discovered or recovered or investigated by the police and rejected the prayer u/s 156(3) and directed to put up the case for examination of the applicant under section 200 of the Cr. P. C.

5. The learned advocate for the applicant vehemently argued the matter. He submits that to make any investigation is only in the hands of the police. In this case recovery is required to be done. Statements needs to be recorded which is beyond the control of the applicant. Observations that nothing is to be discovered or recovered or investigated is not correct. On one hand the court has accepted that if the allegation has taken as it is certainly case is made out under Section 420 and has rejected the application to the extent of directing the police to investigate into the offence. During the course of the argument he relied upon the judgment reported in 2023 SCC Online Ker 836 in the case of Femeena E. Vs State of Kerla and it is held in Para Nos.

18 and 19 as under:

18. The learned public prosecutor relying on Priyanka Srivastava Vs State of UP (2015) 2 KLT (SC) submitted that while ordering an investigation under Section 156(3) Cr. P. C. the Magistrate is required to see whether the guidelines issued by the Apex Court held that there have to be prior applications under sections 154(1) and 154 (3) while filing a petition under Section 156(3) Cr. P. C. and the complainant has to file an affidavit in support of the application under section 156(3) to the effect that he had applied with the provisions in Sections 154(1) and 154(3) Cr. P. C. The learned counsel for the petitioner submitted that the petitioner/complainant had earlier lodged information as provided under Section 154(1) and by refusal on the part of the police, the substance of information was forwarded to the Superintendent of Police concerned.

19. I have already held that the learned Magistrate has failed to apply his mind as to whether forwarding of the complaint under Section 156(3) Cr. P. C. was warranted or not. The reasoning applied by the court below while refusing to send the complaint for investigation is not in accordance with the settled law on the subject. Therefore, the impugned order is liable to be set aside. I hereby set aside the impugned order.

6. The High Court at Kerla based on the judgments in the case of Priyanka Srivastava (supra) has held that if the case is made out which warrants a recovery under Section 27 of the Evidence Act, it is necessary to entrust that task to the police.

Further it is observed that if the documents or other material objects are in the physical possession of the accused or other person in such case also, in the interest of justice, police be given task of the investigating and recovering by resorting the powers under Cr. P. C.

7. Learned APP supports the order passed by the learned JMFC, submitting that in fact, the applicant has only to produce the copies of the bills etc. through which he has received the gold and has issued receipt etc. and therefore, it is not necessary to investigate into such allegations as it is in the cases lodged on the basis of FIR given by the ladies. The investigation is done and that material also can be considered in the present case etc.

8. Considering the argument and the facts of the case this court finds that for the present non controverted facts shows that person who sold his gold to the applicant was found involved in the offence of chain snatching etc. and selling of the

gold. Gold that was purchased by the applicant was allegedly the gold that was stolen by said Yogesh and the same is thereafter converted into ingots and thus thorough investigation is necessary as the accused had also shown his I-card etc. to the applicant while selling the gold. That aspect also needs to be investigated. In such cases certainly it is beyond the control of the applicant to collect the evidence or to go for recovery under Section 27 etc. The powers can be exercised only by the police officer with the aid of the powers given to them under Cr. P. C. This court finds therefore, a case is made out to call for interference with impugned order. The application is allowed in terms of prayer clause (B).

9. Needless to say that the learned Magistrate now decide the said application afresh in view of observations made by this court.

[KISHORE C. SANT, J.]