

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 478 of 2022
(corrected as per order dated 7/11/2023)

Pradeep Jain

.. Applicant

Versus

The State of Maharashtra and anr

.. Respondents

...

Mr. Jaideep Singh Khattar with Mr.Rohit Balani i/b M/s.The Fort Circle for the applicant.

Mr.S.R. Agarkar, APP for the State.

Ms.Namita Maneshinde for respondent no.3.

PSI Ishwar, in charge of Malabar Hill police station present.

CORAM: BHARATI DANGRE, J.

DATED : 30th OCTOBER, 2023

P.C:-

1 The applicant has filed on record an affidavit-cum-undertaking, where he make a specific statement to the following effect :-

“5 I understand that at this stage, the property is being handed over to me on the basis of my undertaking that I will produce the property on the conclusion of the proceedings before the trial court or as and when called upon by the trial court, to produce the same. Thus, I undertake to produce the property at the stage of final proceedings of the matter before the Hon’ble Sessions Court. I further undertake not to deal with the said property or to convert the said property in any form or

manner, pending the conclusion of the trial proceedings before the Hon'ble Sessions Court.

6. This affidavit cum undertaking is being submitted pursuant to the orders dated 4th October 2023. In view of this present affidavit, I am withdrawing my previous affidavit, wherein I had given an undertaking, to not create any third party rights over my residential property so as to secure the value of INR 32,53,029/-"

The affidavit is taken on record.

2 The applicant had moved an application before the Addl. Sessions Judge in Sessions Case No.680/2021 seeking return of property u/s.457 of Cr.P.C on the premise that it is not subject matter of the trial, but the same was seized during the course of investigation.

The specific case projected before the Court is that, the applicant and his family is in the business of jewellery which involve designing, manufacturing as well as sale of ornaments and he borrowed loan from India Infoline Finance Ltd (IIFL), and it is his specific case that he participated in an auction of gold ornaments and procured gold weighing 927 gms at a price of Rs.32,53,029/- and when he received the gold ornaments, he converted into a gold brick weighing 621.110 grams.

It is this brick which is seized during the course of investigation on the complaint filed by the respondent no.3, in furtherance of which an offence is registered u/s. 354 C, 376, 403, 406, 417, 420 and 506 r/w Section 34 of IPC.

3 A perusal of the charge-sheet clearly record that the applicant Pradeep Jain has repaid the amount of loan along with the interest to the tune of Rs.32,53,000/- and his account in the bank is closed.

It is in this background, the applicant who is a bonafide purchaser of the said property, assert that since he has already paid the amount of loan along with interest, the gold ornaments which are now converted by him into a brick and which was seized, deserve to be returned to him.

Since the request was rejected, he has approached this Court.

4 In my considered view, the undertaking in paragraph nos.5 and 6 of the affidavit would serve the interest of the prosecution as the trial may consume considerable period of time.

The undertaking in the affidavit in paragraph nos.5 and 6 is accepted as an undertaking to the Court and a copy of this affidavit shall also be forwarded to the Sessions Court.

Accepting the aforesaid undertaking, the impugned order is quashed and set aside and it is directed that the gold brick weighing 621.110 gms shall be returned to the applicant.

As far as respondent no.3 is concerned, she would submit that she has also filed an application for this gold being given to her, but she shall withdraw the said application.

5 Revision Application stand allowed in the aforesaid terms.

Needless to state that upon the order being passed, the subject property shall be released by the police machinery who is investigating the offence and with whom the property is lying, within a period of 10 days from receipt of this order.

(SMT. BHARATI DANGRE, J.)