

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL INTERIM APPLICATION NO.2433 OF 2024
IN
CRIMINAL APPEAL NO. 820 OF 2017

Au Finja Jewels

.... Applicant

Versus

Amitkumar Mulchand Saini and Anr.

.... Respondents

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WITH
CRIMINAL INTERIM APPLICATION NO. 5035 OF 2024
IN
CRIMINAL APPEAL NO. 820 OF 2017

Mahavir Enterprises and Ors.

.... Applicants

Versus

Amitkumar M. Saini and Anr.

.... Respondents

Mr. Saroj Jadhav i/b Adv. G. Geetha, for the Applicant in IA/2433/2024.

Adv. Sunny Jain a/w Adv. P. M. Purohit, Adv. Abhishek Lolge and Adv. Sanjay Pandey, for the Applicants in IA/5035/2024.

Mr. Harsh Misar, for Respondent No.1.

Adv. P. P. Jadhav, APP, for Respondent No.2 – State.

Mr. Hemant Miraje, PSI, Bandra Police Station, Present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2024.

P.C. :

1. The issue involved in these applications is common hence, I am deciding both these applications by this common order.

2. The Applicants are challenging the clause mentioned in judgment and order passed by the learned Sessions Court, Mumbai in Sessions Case No.240 of 2014 whereby the learned Sessions Judge while convicting the Respondent Nos.2 to 11 for the offence punishable under Section 395 of the Indian Penal Code, 1860 (for short "IPC") directed the state to confiscate the Muddemal and denied its possession to the Appellant.

3. It is contention of learned counsel for the Applicants that the Applicants are owners of Gold Ornaments/Jewellery, which are forming part of Muddemal and which were the subject matter of C.R. No. 594 of 2013.

3.1. Learned counsel further submitted that during the trial the learned Metropolitan Magistrate had returned the Gold Ornament to the first informant and first informant had distributed the said Gold Ornaments/Jewellery to the Applicants and other owners. Thereafter, matter was committed to the learned Sessions Judge. Learned Sessions Judge had directed the first informant to produce

the said Gold Ornaments and Jewellery before said Court but the first informant failed to produce it within stipulated time hence, learned Sessions Court directed all the Applicants including other owners to produce the Gold Ornaments/Jewellery before the learned Sessions Court, after producing it while passing judgment and order, the learned Sessions Judge has confiscated Gold Ornaments/Jewellery.

3.2. Learned counsel further submitted that the accused persons have stated before the learned Metropolitan Magistrate that they have no objection for returning of the Gold Ornaments and Jewellery to the Applicants, who are real owners of it. Hence, requested to allow the applications.

4. Learned APP strongly objected to allow the applications on the ground that when Gold Ornaments/Jewellery were returned to the Applicants, they failed to produce before the learned Sessions Court when required. If this Court inclined to allow the applications indemnity bond be taken from the Applicants stating that they will produce the Gold Ornaments/ Jewellery, as and when required before this Court and requested to pass appropriate order.

5. I have heard all learned counsel.
6. Initially the learned Metropolitan Magistrate had returned the Gold Ornaments/Jewellery to the first informant. The first informant had distributed it to original owners including the Applicants. During trial, the Applicants failed to produce the said Gold Ornaments/Jewellery before the Sessions Court within stipulated time. When, the said Gold Ornaments/Jewellery were produced before the learned Sessions Court, it has been confiscated. The accused persons in the said crime have been convicted. The seized Gold Ornaments/Jewellery is lying before the Sessions Court. The Applicants are the original owners of the said Gold Ornaments/Jewellery.
7. Considering these facts, I pass following order:

ORDER

- i. Both Applications are allowed.
- ii. The order passed by the learned Sessions judge below
at Exhibit-A is quashed and set aside.
- iii. The Applicants are permitted to take back their gold
ornaments/ jewellery by showing their ownership.

iv. They shall furnish the indemnity bond stating that they will not alter or sale the said Gold Ornaments/Jewellery till final disposal of the appeal and will produce before this Court, as and when required.

8. In view of above, both applications stands disposed of.

(SHIVKUMAR DIGE, J.)