

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 4032 OF 2024

**SHWETA LOHARUKA
-VS-
ADITYA VIKRAM AGARWAL & ORS.**

For the Petitioner : Mr. Mayukh Mukherjee,
Ms. Sagnika Banerjee

For the State : Mr. Suman De,
Mr. Mujibar Ali Naskar

For the Opposite Party Nos.1 to 3 : Mr. A Gupta,
Mr. Sudepto Basu,
Mr. M. Das

Hearing concluded on : 25.03.2026

Judgment on : 28.04.2026

UDAY KUMAR, J.: –

INTRODUCTION

- 1.** The inherent powers of this Court under Section 482 of the Code of Criminal Procedure (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023) are invoked to examine the propriety of a revisional order that stifles the truth-seeking process at its

nascent stage. The Petitioner, the *de facto* complainant and a victim of matrimonial discord, seeks the quashing of the judgment and order dated 22.08.2024 passed by the Learned Additional District and Sessions Judge, Fast Track 4th Court, Barasat, in Criminal Revision No. 04 of 2022.

2. By the said order, the Revisional Court proceeded to set aside a well-reasoned direction for 'further investigation' issued by the Learned Additional Chief Judicial Magistrate, Bidhannagar, regarding the non-recovery of the petitioner's *stridhan* property and misappropriated funds; a decision predicated primarily on the grounds of chronological delay and an alleged lack of documentary evidence.

FACTUAL MATRIX

3. The narrative of the Petitioner, Shweta Loharuka, discloses a matrimonial alliance with the Opposite Party No. 1, Aditya Vikram Agarwal, that was ostensibly high on expectations but, as alleged, hollow in substance. Solemnized on 26.01.2017, the union was purportedly marred by persistent dowry demands and an egregious fraud—the husband's knowing concealment of his physical incapacity to consummate the marriage. Driven by systematic cruelty, the Petitioner was eventually forced to seek refuge in the sanctuary of her parental home in 2018.

4. On 10.01.2021, the Petitioner set the criminal law in motion by lodging an FIR at Lake Town Police Station, registered as Case No. 9 of 2021, under Sections 498A/406/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. While the investigating agency effected a partial recovery of *stridhan* articles on 23.08.2021, the probe appeared to hit an abrupt stalemate. This stagnation occurred despite the Petitioner's categorical assertion that high-value gold ornaments and cash to the tune of ₹1,00,000/- remained under the dishonest misappropriation of the accused.
5. Notwithstanding these glaring lacunae, a Charge Sheet (No. 185 of 2021) was filed on 30.08.2021. The Learned Additional Chief Judicial Magistrate, Bidhannagar, upon a meticulous perusal of the Case Diary, found the investigation to be perfunctory and rightly declined to take cognizance. Exercising the statutory mandate under Section 173(8) of the Code, the Learned Magistrate, vide order dated 18.12.2021, directed a further probe to trace the missing articles and collect relevant receipts. The judicial perspicacity/ mind applied by the Learned Magistrate is best reflected in the following observation:

"Perused the CD and other materials on record. It appears to me that some of the stridhan articles could not be recovered by the IO. In this circumstance, cognizance of CS is not taken. IC is directed to take steps for further investigation of this

case after collecting all information and proper receipts, if any... from the defacto complainant which could not be collected by this IO."

6. This directive was intercepted by the Learned Sessions Judge in Criminal Revision No. 4 of 2022. In a reversal that appears to prioritize clinical timelines over the imperatives of substantive justice, the Revisional Court set aside the order for further investigation. The Learned Judge's reasoning was anchored primarily in the Petitioner's failure to produce "cash memos" and the chronological lapse between the separation of the parties and the lodging of the complaint.
7. The relevant excerpts of the impugned judgment, which encapsulate the Revisional Court's restrictive perspective, read as follows:

"It appears from the entire GR case record... not a single scrap of paper has been submitted by the defacto complainant regarding her streedhan property. Except oral submissions, no document has come before this court to show and prove that the list mentioned streedhan property... is accurate."

8. The Court further surmised:

"If the revisionists had any such intention to commit any criminal breach of trust... then they got ample opportunity during the period of 2018-2021 and in that case there was a little scope to recover any of the streedhan property from their house... further investigation... will not serve any more purpose."

GROUND'S OF CHALLENGE

9. The Petitioner assails the impugned order on the following formidable grounds:

- I. The Revisional Court failed to recognize that *Stridhan* is the absolute property of the woman. As held in *Pratibha Rani v. Suraj Kumar (1985) 2 SCC 370*, the husband and in-laws hold such property as trustees; thus, the absence of "cash memos," often non-existent in ancestral transfers, cannot be used as a shield to justify misappropriation.
- II. In an offense under Section 406 IPC, which constitutes a continuing wrong, the date of separation is secondary to the date of refusal to return the property. The Court erred in assuming that a delay in filing the FIR automatically negates the existence of the property.
- III. The Revisional Court overstepped its jurisdiction by substituting speculative conjectures for the Magistrate's subjective satisfaction. A Magistrate's power to order a further probe is a vital safeguard against shoddy investigations and ought not to be disturbed unless demonstrably perverse.
- IV. By stifling the investigation, the Revisional Court has effectively closed the door on the recovery of the

proceeds of crime, resulting in a manifest miscarriage of justice regarding the statutory protection of women's property rights.

POINTS FOR DETERMINATION

10. Upon an anxious consideration of the rival submissions and a dispassionate perusal of the record, the following principal questions emerge for determination:

- i. Whether the Learned Revisional Court exceeded its jurisdiction by interfering with the Magistrate's discretionary power to ensure a complete investigation under Section 173(8) of the Code?
- ii. Whether the absence of 'cash memos' or formal documentary evidence is a legally sustainable ground to stifle an investigation into the criminal breach of trust regarding *Stridhan*?
- iii. Whether chronological delay in setting the criminal law in motion can extinguish the statutory duty of the Investigating Agency to trace and recover misappropriated property?
- iv. Whether the Revisional Court erred in prioritizing the clinical closure of a deficient Charge Sheet over the substantive recovery of a woman's absolute estate?

- v. Whether the perceived 'motives' of a complainant can legally override the objective investigative gaps identified by the Magistrate in the Case Diary?

SUBMISSIONS ON BEHALF OF THE PETITIONER

- 11.** Mr. Mayukh Mukherjee, Learned Counsel appearing for the petitioner, assailed the impugned judgment with characteristic vehemence, mounting a challenge that was as much anchored in legal precedent as it was in the domestic realities of matrimonial jurisprudence. He argued, at the very threshold, that the Revisional Court's preoccupation with the absence of "cash memos" betrayed a fundamental misconception of the law governing *stridhan*. Relying on the seminal ratio in *Pratibha Rani vs. Suraj Kumar [(1985) 2 SCC 370]*, he propounded that *stridhan* is the absolute property of the woman, held by the husband and his kin in a fiduciary capacity as trustees. Learned Counsel emphasized that the entrustment of ornaments and valuables is a natural corollary of the matrimonial union; to demand commercial invoices as a condition precedent for a search is to substitute the "rule of trust" with a "rule of commerce," an approach that is entirely alien to the mandate of Section 406 of the Indian Penal Code.
- 12.** Moving to the procedural propriety of the investigation, Learned Counsel contended that a Magistrate is not a mere "post-office"

destined to receive skeletal and perfunctory police reports. Invoking the principles laid down in *Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel* [(2017) 4 SCC 177], he submitted that when a Magistrate, upon a meticulous perusal of the Case Diary, finds the investigative efforts to be lacklustre, he is duty-bound to invoke Section 173(8) of the Code. The direction for further investigation in the instant case was not a "whimsical" exercise but a deliberate "truth-seeking" endeavour aimed at recovering the proceeds of crime. By setting aside this directive, the Revisional Court has effectively institutionalized a shoddy investigation, thereby stifling the quest for substantive justice at its nascent stage.

- 13.** Learned Counsel further countered the Revisional Court's observations regarding the three-year hiatus between the separation of the parties and the lodging of the FIR. Drawing support from *Arun Vyas vs. Anita Vyas* [(1999) 4 SCC 690], he argued that the offense of criminal breach of trust is a "continuing wrong" where the refusal to return property upon demand constitutes a fresh cause of action. He highlighted an inherent paradox in the impugned judgment: if the passage of time had truly rendered recovery "futile," then the successful partial seizure already effected by the police on 23.08.2021 would have been a factual impossibility. This partial recovery, he asserted, was the most potent evidence that the remaining

articles continue to be in the dishonest possession of the accused, necessitating the further probe ordered by the Magistrate.

14. Finally, it is argued that the Revisional Court exceeded its limited mandate under Section 397 of the Code by substituting its own "subjective satisfaction" for that of the Magistrate. Counsel maintains that a Revisional Court cannot act as a Court of Appeal to disturb a discretionary order unless it is found to be patently perverse or devoid of jurisdiction. In the present instance, the Magistrate acted as the sentinel of the Petitioner's rights, while the Revisional Court adopted a casual approach that prioritizes a "speedy trial" of a deficient Charge Sheet over the "fair recovery" of a victim's assets. Consequently, he prays for the restoration of the Magistrate's order to ensure that the investigation reaches its logical and physical conclusion.

15. Summing up his submissions, Counsel prays for the restoration of the Magistrate's order, asserting that the investigation must be allowed to reach its "logical and physical conclusion" to ensure the petitioner is not denuded of her absolute property.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES

16. Conversely, Mr. Suman De & Mr. A Gupta, Learned Counsels appearing for the opposite parties, defended the impugned judgment with equal vigour, characterized the Revisional Court's

intervention as a necessary corrective against a "roving and fishing" inquiry. They submitted that the petitioner, having voluntarily exited the matrimonial home as far back as 2018, maintained a calculated silence for over three years, only to set the criminal law in motion in 2021 as a collateral "pressure tactic" to bolster her pending matrimonial suit. This chronological chasm, Learned Counsels argued, created an impenetrable cloud of doubt over the *bona fides* of the allegations and lends credence to the Revisional Court's finding that the prayer for further investigation was a vexatious attempt to keep the accused under the sword of Damocles.

- 17.** Expanding on the factual history, Learned Counsels contended that the investigation had already reached its logical and saturated conclusion. They pointed out that the Investigating Officer had conducted a comprehensive search and seizure on 23.08.2021 in the presence of the petitioner herself and a verified goldsmith, where every "available" article was recovered and duly inventoried. They submitted that once a Charge Sheet had been filed after such an exhaustive exercise, the Magistrate cannot, in a mechanical fashion, order the police to "recover more" based solely on the unsubstantiated oral claims of the complainant. They argued that to compel the investigating agency to search for articles whose very existence is not supported by a "single scrap of paper" or "cash memo" is to

demand the performance of an impossibility, which is anathema to the principles of fair play and natural justice.

18. Adverting to the legal position, Learned Counsels relied upon the observations in *Vinubhai Haribhai Malaviya vs. State of Gujarat [(2019) 17 SCC 1]* to caution that the power to order further investigation must be exercised "judicially" and not "whimsically." They submitted that the Revisional Court correctly identified that the Learned Magistrate had fallen into error by blindly giving undue weightage to the petitioner's oral version while ignoring the repeated reports of the Investigating Officer stating that no further articles could be traced. By setting aside the direction for a further probe, the Revisional Court has merely ensured that the trial proceeds on the basis of tangible evidence rather than the "surmises and conjectures" of the court of first instance.

19. In conclusion, Learned Counsels argued that the impugned judgment does not suffer from any illegality, as it prevents the criminal process from being converted into an instrument of harassment. Counsel maintains that the "truth-seeking" process has already been exhausted through the recovery of items mentioned in the seizure list, and any further investigation would be a "futile exercise" resulting in the unnecessary incarceration of the liberty of the accused. They, therefore, pray for the dismissal of the instant revisional application and the

affirmation of the judgment which directs the Magistrate to proceed with the trial on the basis of the existing materials on record.

***DISCUSSION ON POINTS FOR DETERMINATION AND
FINDINGS***

- 20.** I shall now address the first point for determination, which strikes at the very root of the jurisdictional boundary between a Magistrate's oversight and a Revisional Court's interference. The Learned Revisional Court, in its zeal to ensure a "speedy trial," appears to have overlooked the foundational principles governing the Magistrate's role as the sentinel of investigation. To resolve this, it is imperative to dissect the ratio in *Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel [(2017) 4 SCC 177]*, which has been cited by the petitioner but, in my view, significantly misapplied by the court below.
- 21.** In *Amrutbhai (supra)*, the Hon'ble Supreme Court was dealing with a scenario where an accused sought further investigation. The specific ratio propounded therein is that while an accused has no right to demand a further probe, the Magistrate possesses an independent, statutory power under Section 173(8) of the Code to ensure the "ends of justice" are met. The Court held that the Magistrate is not a mere conduit for the police report and must apply his judicial mind to see if the

investigation is "fair, effective, and complete." The Learned Sessions Judge, however, failed to distinguish the facts of the present case from the restrictive application of *Amrutbhai*. In the case before us, it is the *victim*, the absolute owner of the property, who identified a glaring void in the recovery process, and the Magistrate, acting as a truth-finder, found the investigation to be perfunctory.

- 22.** Furthermore, the Revisional Court failed to reconcile its findings with the expanded ratio in *Vinubhai Haribhai Malaviya vs. State of Gujarat [(2019) 17 SCC 1]*. In *Vinubhai*, the Apex Court essentially broadened the horizon of the Magistrate's power, holding that the "search for truth" is the primary guiding star and that further investigation can be ordered at any stage until the trial commences. The factual matrix here is distinct, this Court is not dealing with a "roving inquiry" into unknown facts, but a specific quest for high-value gold ornaments and cash clearly mentioned in the FIR. Since a partial recovery was already effected on 23.08.2021, the "existence" and "entrustment" of the *stridhan* were no longer in the realm of speculation. By setting aside the Magistrate's order, the Revisional Court effectively held that "half an investigation" is sufficient, a proposition that stands in direct contradiction to the spirit of *Vinubhai*.

- 23.** The Revisional Court also placed reliance on certain precedents suggesting that once a Charge Sheet is filed, the Magistrate's hands are tied. However, the facts of this case are easily distinguishable from those where a "re-investigation" (de novo) is sought. Here, the Magistrate merely sought a continuation of the existing search to bridge a documented lacuna. The ratio in *Sanapareddy Maheedhar Seshagiri vs. State of Andhra Pradesh [(2007) 13 SCC 165]* underscores that a High Court or a Revisional Court should not stifle a legitimate probe by speculating on its outcome. The Learned Sessions Judge's conclusion that a search would be "futile" was a factual leap taken without the benefit of a trial, thereby encroaching upon the domain of the investigating agency and the Magistrate.
- 24.** Consequently, after sifting through the cited authorities and distinguishing their factual foundations from the present controversy, I find that the Magistrate's order was a robust exercise of judicial supervision aimed at curing a patent investigative failure. The Revisional Court's interference was predicated on a misreading of the jurisdictional limits set by *Amrutbhai* and *Vinubhai*. The Magistrate's directive was not an act of perversity but a necessary step toward the recovery of the proceeds of crime. Therefore, the first question is answered in the affirmative, the Magistrate acted within his jurisdiction,

and the Revisional Court's interference was a manifest error of law.

- 25.** The second point for determination concerns the evidentiary threshold required to sustain an investigative search for *stridhan*, specifically, whether the absence of "cash memos" or formal receipts at the pre-cognizance stage is a legal bar that renders further recovery "futile." The Revisional Court, in its impugned judgment, placed an almost insurmountable emphasis on the lack of documentary proof, concluding that in the absence of "a single scrap of paper," the Magistrate's direction to search for missing jewellery was an exercise in futility.
- 26.** This Court finds that such a conclusion is not only detached from the domestic realities of Indian matrimonial life but is also fundamentally inconsistent with the ratio decidendi in *Pratibha Rani vs. Suraj Kumar* [(1985) 2 SCC 370]. In *Pratibha Rani* (*supra*), the Hon'ble Supreme Court categorically defined *stridhan* as the absolute property of the woman, held by the husband and his kin in a fiduciary capacity as "trustees." The specific ratio of that landmark decision propounds that the entrustment of such property is a natural consequence of the marriage, and the husband's refusal to return it constitutes a criminal breach of trust under Section 406 of the Indian Penal Code.

- 27.** Crucially, the facts of the present case must be distinguished from those involving commercial transactions where "receipts" are the primary evidence of ownership. In the present matrix, we are dealing with matrimonial gifts, often ancestral or received during social ceremonies, where formal invoices are rarely generated or preserved. The Revisional Court failed to appreciate that the partial recovery already effected by the police on 23.08.2021 acted as a "factual validation" of the petitioner's claim. If the lack of receipts made the claim "doubtful," then the initial recovery of several gold articles from the matrimonial home should have been impossible. This partial success creates a strong *prima facie* presumption that the remaining articles, as listed in the FIR, are likely being dishonestly retained.
- 28.** Furthermore, the Revisional Court's reasoning conflicts with the principles established in *Rashmi Kumar vs. Mahesh Kumar Bhada* [(1997) 2 SCC 397]. The ratio in *Rashmi Kumar* underscores that the "entrustment" of *stridhan* is a matter to be proved during trial, but for the purpose of investigation and search, the specific description provided by the complainant is sufficient to set the machinery in motion. By demanding "cash memos" as a condition precedent for a search warrant or further probe, the Sessions Judge has effectively applied the standard of "proof beyond reasonable doubt," required for a final

conviction, at the nascent stage of the investigation. This is a patent misapplication of the law.

- 29.** The principles of law governing Section 14 of the Hindu Succession Act, 1956, further reinforce this point. Since *stridhan* is the woman's absolute estate, the state's investigative machinery is duty-bound to assist in its recovery when a cognizable offense of misappropriation is disclosed. To stifle a search on the ground of "lack of documents" is to denude the victim of her statutory protection. The Magistrate's order was a "truth-seeking" directive intended to bridge the gap between the "alleged list" and the "recovered list."
- 30.** Consequently, sifting through the relevant provisions and the cited authorities, this Court finds that the Revisional Court's obsession with "cash memos" was a legal fallacy. The lack of receipts does not extinguish the fiduciary duty of the trustees nor does it stifle the power of the Magistrate to order a search for the recovery of the proceeds of crime. Therefore, the second question is also answered in favour of the Petitioner that the Magistrate was perfectly justified in directing further investigation to trace the remaining ornaments, and the Revisional Court's interference on the ground of "lack of evidence" was premature and legally unsustainable.
- 31.** The third point for determination brings into focus the impact of chronological delay upon the validity of a criminal search,

specifically, whether a three-year hiatus between the separation of the spouses and the registration of the FIR can legally render a further investigation under Section 173(8) "futile" or "stale". The Learned Revisional Court placed significant weight on this "time-gap", suggesting that the petitioner's silence from 2018 to 2021 cast such a shadow of doubt that any directive for recovery was an exercise in futility.

- 32.** In addressing this, it is necessary to examine the specific ratio in *Arun Vyas vs. Anita Vyas* [(1999) 4 SCC 690], which was cited to emphasize that matrimonial offences, particularly those involving the retention of *stridhan*, cannot be viewed through the narrow prism of chronological limitation. The ratio in *Arun Vyas* (*supra*) propounds that the offence of criminal breach of trust (Section 406 IPC) is a "continuing offence." Every day that the husband or his kin dishonestly retain the property after a demand for its return is made, a fresh period of limitation—if applicable—begins to run. More importantly, the Court held that the "ends of justice" and the protection of a woman's right to her property must take precedence over technical delays.
- 33.** The Revisional Court failed to distinguish the facts of the present case from those where delay is used as a tool for fabrication. In the present matrix, the "delay" is not an indicator of a false claim, but rather a reflection of the typical trajectory of matrimonial discord where parties often wait for a reconciliation

before resorting to criminal law. Furthermore, the factual reality on record completely negates the "futility" argument. On 23.08.2021, three years after the separation, the police *did* recover several articles from the matrimonial home. This successful partial seizure is a physical fact that destroys the Revisional Court's theory that the passage of time had made the property disappear. If some items were present in 2021, there is a legitimate legal and factual basis to believe the remaining gold ornaments are also being concealed within the same premises.

- 34.** This Court must also look at the principle of "Continuing Wrong" as enshrined in Section 472 of the Code (now Section 524 of the BNSS, 2023). The misappropriation of *stridhan* is not a "one-time act" but a persistent state of dishonest retention. The ratio in *Vanka Radamanohari vs. Vanka Venkata Reddy [(1993) 3 SCC 4]* further clarifies that in matrimonial disputes, the court must adopt a liberal approach toward delay, ensuring that a "hyper-technical view" does not result in the miscarriage of justice. By labeling the search as "futile" due to delay, the Sessions Judge effectively created a "judicial statute of limitations" on the police's power to recover stolen property, a concept that is alien to the Code.
- 35.** Furthermore, the Revisional Court's interference stands in contradiction to the mandate of Section 14 of the Hindu

Succession Act, which grants the petitioner an absolute right over her *stridhan*. A delay in filing an FIR does not extinguish a woman's proprietary title, nor does it denude the Magistrate of his jurisdiction to order a recovery of the "proceeds of crime". The Magistrate's direction to bridge the gap between the *alleged* list and the *actual* recovery was a clinical exercise of judicial duty intended to restore the victim to her rightful position.

36. Consequently, after analysing the cited authorities and distinguishing the factual success of the 2021 seizure from the Revisional Court's theoretical skepticism, I find that the Magistrate acted with commendable foresight. The "time-gap" was a matter of trial appreciation, not a bar to an investigative search. The third point is thus answered in favour of the Petitioner: the chronological delay did not render the search "futile," and the Magistrate was legally justified in ordering the investigation to reach its logical conclusion. The Revisional Court's reversal on this ground was both factually erroneous and legally perverse.

37. The fourth point for determination mandates a scrutiny of the judicial philosophy governing the competing interests of "speedy disposal" versus "substantive justice" specifically, whether a Revisional Court is justified in prioritizing the commencement of a trial over the Magistrate's directive to rectify a perfunctory investigation. The Learned Sessions Judge, in her impugned

judgment, expressed the view that since a Charge Sheet had already been submitted, any further direction for recovery would merely delay the trial and "not serve any useful purpose."

38. In addressing this, we must turn to the specific ratio in *Vinubhai Haribhai Malaviya vs. State of Gujarat [(2019) 17 SCC 1]*, a decision that has fundamentally reshaped the landscape of pre-trial procedure. The ratio in *Vinubhai (supra)* propounds that the "search for truth" is the ultimate goal of the criminal justice system and that a "fair investigation" is a fundamental right guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court held that this right to a fair investigation is not a one-way street, it extends to the victim as much as the accused. Consequently, a Magistrate's power to ensure a complete investigation remains vibrant until the actual commencement of the trial.

39. The Revisional Court failed to distinguish the facts of the present case from those where a trial is unnecessarily stalled for frivolous reasons. In the present matrix, the "lacuna" identified by the Magistrate was not formal or technical; it was a substantive failure to recover high-value gold ornaments that form the corpus of the offence under Section 406 IPC. To suggest that a trial should proceed on a "skeletal" Charge Sheet while the proceeds of the crime remain in the pockets of the accused is to reduce the judicial process to a hollow formality.

The Magistrate's direction to bridge this gap was an act of "filling the voids" to ensure that the trial, when it begins, is based on a complete set of facts.

40. This Court finds that the Sessions Judge's preoccupation with "speedy disposal" conflicts with the principles of law established in *Hasanbhai Valibhai Qureshi vs. State of Gujarat [(2004) 5 SCC 347]*. The ratio in *Hasanbhai (supra)* underscores that "procedural technicalities should not be allowed to come in the way of the court's duty to find the truth." The Court categorically held that if further investigation is necessary to bring the real facts on record, it should be ordered even if it causes some delay, as "speedy trial" cannot be a substitute for a "fair trial." By reversing the Magistrate's order, the Revisional Court effectively prioritized the "closing of a file" over the "recovery of property," a hierarchy of values that is alien to the spirit of matrimonial jurisprudence.

41. Furthermore, one must consider the statutory mandate of Section 14 of the Hindu Succession Act and Section 27 of the Hindu Marriage Act. These provisions recognize *stridhan* as the absolute estate of a woman. When the criminal machinery is invoked for its misappropriation, the primary objective is the restoration of the property. A trial that concludes without an exhaustive effort to recover the *stridhan* results in a "paper victory" for the victim but a "practical windfall" for the accused.

The Magistrate, as the sentinel of the victim's rights, correctly identified that a search for the missing gold was an indispensable prerequisite for a just trial.

42. Consequently, after analysing the cited authorities and distinguishing the Magistrate's "truth-seeking" intent from the Revisional Court's "form-over-substance" approach, I find that the interference by the Learned Sessions Judge was legally flawed. The Magistrate's order was a remedial measure intended to prevent a "failure of justice" caused by an indolent investigation. The fourth point is thus answered in favour of the Petitioner: the administrative goal of "speedy trial" cannot override the statutory and constitutional requirement of a "fair and complete investigation." The Revisional Court's interference on this ground was an overreach of its jurisdiction.

43. The final point for determination invites this Court to consider whether a Revisional Court can legally substitute its own subjective perception of a complainant's "motives" for the objective "investigative lacunae" identified by the Magistrate. The Learned Sessions Judge, in her impugned judgment, appeared to be influenced by the theory that the Petitioner's pursuit of criminal proceedings was a "pressure tactic" or an act of "vengeance" aimed at settling matrimonial scores. This Court must decide if such an inferential leap is permissible when the record clearly demonstrates an incomplete recovery of property.

- 44.** In addressing this, I must look at the seminal ratio in *State of Haryana vs. Bhajan Lal* [1992 Supp (1) SCC 335]. While this judgment is often cited for the quashing of FIRs, its specific ratio propounds that the "motives" or "malice" of a complainant are entirely secondary to whether the allegations disclose a cognizable offense. The Court held that even if a complaint is motivated by personal animosity, it cannot be stifled if it warrants an investigation into a crime. The Revisional Court failed to distinguish the facts of the present case from those where a complaint is "patently absurd" or "inherently improbable." Here, the allegation of misappropriation of *stridhan* was not only probable but was partially corroborated by the recovery already effected on 23.08.2021.
- 45.** The Revisional Court's logic that the accused had "ample opportunity" to dispose of the jewellery and therefore the search was a "futile exercise" is a speculative inference that lacks any foundation in the Case Diary. This approach conflicts with the principle of "Subjective Satisfaction of the Magistrate" as articulated in *H.N. Rishbud vs. State of Delhi* [AIR 1955 SC 196]. The ratio in *H.N. Rishbud* establishes that the formation of an opinion as to whether there is a case for trial is the exclusive domain of the Magistrate based on the results of the investigation. By labelling the search as "futile" based on a personal theory of "motive," the Sessions Judge essentially

usurped the investigative agency's function and the Magistrate's supervisory role.

- 46.** Furthermore, the principles of matrimonial jurisprudence, particularly the fiduciary nature of *stridhan* as discussed in *Pratibha Rani (supra)*, dictate that a woman's persistence in recovering her absolute property should be viewed as a vindication of her statutory rights under Section 14 of the Hindu Succession Act, rather than being dismissed as "harassment." To allow an accused to benefit from the theory that "too much time has passed to find anything" creates a dangerous precedent. It effectively rewards the successful concealment of stolen property. The Magistrate's order was a clinical attempt to bridge the gap between the Petitioner's list of gold and the Investigating Officer's skeletal recovery.
- 47.** This Court finds that the Revisional Court's interference stood on the shaky ground of "surmises and conjectures." A judicial order under Section 397/401 of the Code cannot be sustained if it is based on a skeptical view of the complainant's character rather than the material facts of the investigation. The Magistrate identified a specific void, the missing high-value ornaments, and sought to fill it. The Revisional Court's interference on the grounds of "perceived motives" was, therefore, a jurisdictional overreach.

- 48.** Consequently, after sifting through the relevant precedents and distinguishing the factual reality of an incomplete recovery from the Revisional Court's theoretical skepticism, the final point is answered in favour of the Petitioner. The "motive" of the complainant is irrelevant when the "proceeds of crime" remain untraced. The Magistrate's direction for further investigation was a legitimate exercise of his power to ensure a fair and complete investigation. The Revisional Court's reversal of that order was legally perverse and resulted in a manifest miscarriage of justice.
- 49.** On a holistic appreciation of the facts and the legal principles discussed hereinabove, this Court is of the firm view that the Learned Revisional Court has committed a manifest error of law by substituting its own skepticism for the objective judicial satisfaction of the Magistrate. The record reveals a glaring disparity between the specific schedule of *stridhan* provided by the petitioner and the skeletal recovery effected by the investigating agency. In a matrimonial offense involving criminal breach of trust, the investigation cannot be deemed "complete" so long as the substantial corpus of the offense, in this case, high-value gold ornaments, remains untraced due to a perfunctory search. To treat the filing of a Charge Sheet as a statutory ceiling that prevents the recovery of a victim's

absolute property is to reduce the judicial process to a mere administrative ritual.

50. The legal position that emerges is that the power of a Magistrate to ensure a "fair and complete investigation" under Section 173(8) of the Code remains vibrant and untrammelled until the actual commencement of the trial. This power is not a matter of formal procedure but is a fundamental facet of the right to a fair trial under Article 21 of the Constitution. As propounded in the ratios of *Vinubhai Haribhai Malaviya (supra)* and *Amrutbhai Shambhubhai Patel (supra)*, the Magistrate is the master of the investigation and is duty-bound to bridge any investigative lacunae that would otherwise result in a failure of justice. The Revisional Court, by interfering with a discretionary, truth-seeking order of the Magistrate, exceeded its jurisdiction and prioritised "speedy disposal" over the "rule of trust" that governs the protection of *stridhan*.

51. Furthermore, the chronological delay and the absence of "cash memos" are evidentiary nuances to be weighed during the appreciation of evidence at trial; they cannot operate as a jurisdictional bar to the conduct of an investigative search. The fact that the police successfully recovered several articles from the matrimonial home in 2021, three years after the separation, is the most damning factual evidence against the theory that a further search would be "futile." To allow the husband and his

kin to retain the remaining *stridhan* under the pretext of "lack of documents" or "delay" would be to institutionalize the misappropriation of a woman's absolute estate, thereby defeating the mandates of Section 14 of the Hindu Succession Act.

- 52.** Consequently, the impugned judgment and order of the Revisional Court cannot be sustained in the eye of law. The Magistrate's order was a robust exercise of judicial propriety intended to ensure that the "proceeds of crime" are not successfully concealed by the accused. The interference by the Learned Sessions Judge has resulted in a miscarriage of justice that warrants the corrective intervention of this Court in its revisional jurisdiction.
- 53.** Accordingly, the instant Criminal Revision being CRR 4032 of 2024, is allowed.
- 54.** Interim order/orders, if any, stand disposed of accordingly.
- 55.** The judgment and order dated 22.08.2024 passed by the Learned Sessions Judge in Criminal Revision No. 04 of 2022, is hereby set aside and quashed.
- 56.** The order of the Learned Additional Chief Judicial Magistrate dated 18.12.2021 is restored in its entirety.
- 57.** The Investigating Agency is directed to:

- (i) Carry out a robust further investigation as directed by the Learned Magistrate to trace and recover the remaining *stridhan* articles mentioned in the FIR.
- (ii) Utilize all investigative tools at their disposal, including but not limited to, the interrogation of the custodians and searches of premises where the property is reasonably suspected to be concealed.
- (iii) Submit a supplementary report under Section 173(8) of the Code before the Learned Magistrate within a period of eight weeks from the date of communication of this order.

58. The Learned Magistrate shall, upon receipt of such supplementary report, proceed in accordance with the law to ensure that the trial commences only after the investigative gaps are addressed to the satisfaction of the Court.

59. There shall be no order as to costs.

60. Let a copy of this judgment be communicated to the Learned Court below and the concerned Police Station forthwith for immediate compliance.

61. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

62. Case diary, if any, be returned forthwith.

- 63.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)