

MHCC020035962021



Presented on : 11.03.2021.
Registered on : 12.03.2021.
Decided on : 08.12.2022.
Duration : 01Y 08M 25D

IN THE COURT OF ADDITIONAL SESSIONS JUDGE MUMBAI,

AT GR. BOMBAY

CRIMINAL REVISION APPLICATION NO. 128 OF 2021.

IN

C.C.NO. 2801271/MISC/2020.

Dadasaheb @ Dineshbhai Vasant Jadhav.

...Applicant.

Vs.

1. Senior Inspector of Police,
(L. T. Marg Police Station).
2. Hitesh Kevalchand Solanki,
3. Paresh Kevalchand Solanki,
4. Vishal Ganesh Varma.

...Respondents.

Appearances :-

Ld. Adv. Mr. Vijay Desai for the Applicant.

Ld. APP. Mr. Sukhdev for the State/Respondent No.1.

Ld. Adv. Mr. Amol Dange for Respondents No.2 to 4.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE
DR. A. A. JOGLEKAR (C.R.NO.37)**

DATED : 08TH DECEMBER, 2022.

ORAL ORDER

Taking exception to the order dated 06.03.2021, in C.C.No. 2801271/MISC/2020 passed by the Ld. Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, thereby rejecting the application for return of property and aggrieved by the said order the revision applicant has preferred this revision application under Section 397 of the Code of Criminal Procedure, (in short "Cr.P.C.").

2. It is the case of the applicant that, he is engaged in a business alongwith his friend in sale and purchase of gold ornaments under the name and style as, M/s. Ikon Gold and during the course of his business he came in contact with accused Hitesh Solanki qua respondent No. 2. It is further stated that, the said accused requested the applicant for gold ornaments in order to display the same at exhibition and promised the complainant that he will return the said ornaments at the conclusion of exhibition. Accordingly, 22 Carat Gold weighing 2358.790 grams, 3964.090 grams and 761.170 grams respectively was handed over to the accused on three different dates under a receipt only for the purposes of display of exhibition. Pursuant to the conclusion of exhibition the applicant/complainant tried to contact the accused, but the accused avoided the complainant and his calls. Thus, complaint was lodged under the sections *ibid*. And during the course of investigation the police recovered total 5Kg gold bricks, 3 grams gold and 300 grams of gold lagadi under panchnama from one Paresh Solanki and Vishal Varma at the instance of accused Hitesh Solanki.

3. Thereafter, applicant / complainant applied for return of property before the Ld. Trial Court alongwith requisite documents. Thereafter, Ld. Trial Court passed the impugned order as on dated 06.03.2021 and thereby rejected the application. Thus, aggrieved by the impugned order dated 06.03.2021 the applicant has preferred the present application.
4. Ld. Advocate for applicant states that, the said application was resisted by the accused i.e. respondent No. 2 and his brother Paresh Solanki i.e. the respondent No. 3. Kavalchand Solanki the father of the accused/respondent No.2 also had filed an application with Faraskhana Police Station, Pune as on 20.09.2020 against the accused Hitesh Solanki. It is categorically stated that, the said application filed by the father of the accused mentions that Hitesh Solanki i.e. the respondent No. 2 is not the partner of the Amrut Jewelers. But as per the panchnama dated 17.09.2020 which is recorded in presence of two panchas disclose that, Paresh Solanki revealed before the police that in the last week of January 2020 his brother Hitesh Solanki has given him 5Kg bricks of gold for keeping the same with Amrut Jewelers.
5. Further, it is stated that, the Ld. Trial Court committed an error while appreciating 3 vouchers produced before the Court which actually were only 2 vouchers. It is also stated that, the Ld. Trial Court failed to appreciate the number of bill of issue of approval and lastly, it is stated that, the Ld. Trial Court failed to appreciate fact that Vikram Katkar had tendered such no objection, although he was not made a party. Ld. Advocate for applicant states that, the Ld. Trial

Court failed to appreciate the fact that Paresh Solanki had not produced the gold in the form of ornaments and that, it was mismatch of recovery by the police and that the applicant could not establish such nexus is wrongly observed by the Ld. Trial Court without considering the evidence placed by the applicant in prima-facie. Hence, the Ld. Advocate for applicant prayed for allowing the criminal revision application and that he also states that the prosecution has not raised objection for tendering such property to the applicant.

6. Per contra the prosecution has filed their reply vide Exh.5 and *inter alia* have stated that, such property be handed over to the informant upon terms and conditions as levied by this Court. Thereafter, the respondent No. 2 has filed his reply vide Exh.4 and *inter alia* has resisted the application on various grounds. He categorically states that, he was brought from Pune to Mumbai as on 16.09.2019 in the private vehicle owned by the applicant and that the applicant also had accompanied the sleuth to Pune. Further, it is stated that, as on 17.09.2019 respondent No. 2 was pressurized and that, he was shown the photograph of his father, brother and wife and was threatened by the applicant and police officers that, if he does not give such statement they will harm his family members and therefore, he gave such statement stating that, he has given the gold ornaments to his father and brother at the shop named Amrut Jewelers and lastly, it is stated that, the gold recovered by the police officers belongs to Amrut Jewelers and does not belong to the

revision applicant. Hence, he prayed for dismissal of the revision application.

7. Further, the respondent No. 3 has filed his reply as on dated 31.08.2021 thereby categorically stating that, respondent No. 3 is a partner of Amrut Jewelers. He further in specific states that, he has produced the documents on record which propel for the gold ornaments were handed over to one Onkar Jewelers for melting the same into ingot/brick, it will show that under such threat and pressure the gold ornaments of Amrut Jewelers were melted and handed over to L. T. Marg Police Station. Lastly, he states that, the applicant in his application has stated that, the gold ornaments were handed over to accused Hitesh Solanki. The bricks have been recovered from the respondent No. 3 under panchnama and therefore, in view of the same the respondent No. 3 is entitled to get the possession of the same. Hence, it is categorically stated that, the Ld. Trial Court has rightly rejected the application of the applicant and it being a reasoned order requires no indulgence at the hands of this Court. Hence, he prayed for rejection of application.

8. Heard Ld. Advocate for applicant, Ld. APP for the State/respondent No. 1, and Ld. Advocate for respondents No. 2 to 4. Perused the application and reply, alongwith the allied documents filed and relied by the parties. In this regard, following points arise for my consideration and the same are answered by way of findings thereto.

	POINTS	FINDINGS
1.	Whether any interference / indulgence on account of impropriety or illegality is required in the impugned order by this Court?	In the Negative.
2.	What Order?	As Per Final Order.

REASONS

AS TO POINT NOS. 1 AND 2 :-

9. It evinces to myself that, undoubtedly, the factum of theft is not disputed. The applicant in specific has stated that, the gold ornaments were handed over to the accused on three occasions within an intervening period of one month for the purposes of display at exhibition and post exhibition it was to be duly returned. The said handing over of custody of the gold ornaments was for the purposes of sample and on returnable basis. The applicant has claimed himself to be the owner of the said property and post lodging such complaint by the applicant with the respondent agency, he was informed of such recovery and post inspection and identification of the said property the applicant has confirmed the same to be under his ownership. It is also stated that, the applicant has all such delivery challans which are signed by the accused.

10. The Ld. Advocate for applicant has filed and relied on three case laws which ensue as under,

1. Pappu Rajaram Marathe Vs. The State of Maharashtra, 2021 ALL MR (Cri) 3586.

2. Writer Business Services Pvt. Ltd., Vs. The State of Maharashtra and Ors., 2021 ALL MR (Cri) 4199.

3. Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003 ALL MR (Cri) 363 (S.C.).

11. Considering the conspectus of the aforesaid case laws it is evident that, the said case laws, deal with the basic preposition with regard to such seized muddemal, whether ordinary or valuable. And in this regard, it is settled that, the owner of the article should not suffer because of its remaining unused or by its misappropriation. Undoubtedly, it is evident that, in the present scenario the form of seized valuable muddemal has been changed and that the applicant although states to have identified alongwith the respondent agency conceding for it cannot be permitted accordingly on account of the fact that the seized muddemal is valuable in form and thereafter it is converted into a brick. Therefore, I do humbly submit that, the case laws filed and relied by the applicant cannot be considered or applied to the case in hand.

12. I have minutely perused the impugned order passed by the Ld. Trial Court. On perusal of the documents qua the vouchers undoubtedly are stated to be issued on three occasions, but what came to be produced before the Ld. Trial Court were only 2 vouchers and even by way of this revision application it has went unexplained that, how come between such 20 days, the dates upon the vouchers are in sequence. It is also not the case of the applicant that, in the meantime there were no such transactions or dealings as such. Further, the difference in the description of the gold and the

recovered gold i.e. by way of ornaments and that in the form of bricks naturally cannot categorically specify the factum of identification, more especially when it is the case of the applicant that, he was informed by the respondent agency of such recovery. He has categorically stated that, upon such inspection and identification the said property, confirmed that the said property belonged to him. The Ld. Trial Court has rightly observed that, there is difference in description of gold misappropriated and that recovered by the police. Therefore, I failed to understand as to how come the applicant identified and confirmed the ornaments which were recovered in the form of bricks and that when they were handed in the form of ornaments. Considering this particular aspect, even at this stage the application with regard to such interim custody cannot be considered. Therefore, the order of the Ld. Trial Court does not require any indulgence at this stage. Hence, in my considerate view, I hold that, the application deserves no consideration. Resultantly, point No. 1 is answered in the negative and as to point No. 2 following order is passed :-

ORDER

The Criminal Revision Application No. 128 of 2021 is dismissed and disposed of accordingly.



(DR. A. A. JOGLEKAR)
Additional Sessions Judge
City Civil & Sessions Court,
Gr. Bombay (CR.37)

Date : 08.12.2022.

Dictated on : 08.12.2022.
Transcribed on : 10.12.2022.
HHJ signed on : 12.12.2022.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
12.12.2022.	05.39 p.m.	Mahendrasing D. Patil Stenographer (Grade-I)

Name of the Judge (With Court Room No.)	HHJ DR. A. A. JOGLEKAR (C.R.No.37)
Date of Pronouncement of JUDGMENT / ORDER	08.12.2022.
JUDGMENT/ORDER signed by P.O. on	12.12.2022.
JUDGMENT/ORDER uploaded on	12.12.2022.