

**Sessions Case No. 45/2024 (R. No.45/24)**

Present : Sri Abir Chatterjee, Additional District & Sessions Judge,  
2<sup>nd</sup> Court, Sealdah.  
JO Code :WB-0833

**Order No.12 dated 30.01.2025**

Today is fixed for order in respect of application for further investigation submitted on behalf of defacto complainant on 19.09.2024.

Swarnali Saha lodged a written complaint with the O/C, Manicktala PS on 29.09.2023 against her husband and in-laws inter alia alleging offence which are punishable U/s 498A/406/506/307/323/325/341/354B/354C/313/34/120B of IPC read with Section 3 & 4 of Dowry Prohibition Act read with Section 66E of I.T. Act read with Section 5 of M.T.P. Act. The complaint led to registration of formal FIR being No.259 dt.29.09.2023 and Section 67 & 67A of I.T. Act was also added.

During the course of investigation, medical and forensic examination of the victim lady were duly conducted. The accused persons were arrested and several seizure was made in respect of digital appliance, documents and streedhan items both at residence, bank locker, place of work and other location. Ultimately, Charge Sheet was filed before the Trial Court and cognizance thereof was taken on 28.05.2024 U/s 498A/406/506/509/323/341/354/354C/354D/313/34 of IPC read with Section 3 & 4 of Dowry Prohibition Act read with Section 66 & 67A of I.T. Act read with Section 5 of M.T.P. Act. Subsequently, on 05.06.2024 the case was committed to the Court of Sessions.

On 12.06.2024 Ld Addl. Sessions Judge, 1<sup>st</sup> Court was pleased to frame charges against the accused persons. Being aggrieved over the order regarding framing of charges, the defacto complainant had challenged the order. Thereafter, Hon'ble Court vide Order dt.10.09.2024 & subsequent order dt.17.09.2024 in CRR No.2936/2024 was pleased to direct the trial Court to frame charges against the accused persons U/s 354D/406 read with Section 5 of MTP Act, 1971 and Section 3/ 4 of Dowry Prohibition Act in addition to Section 506/509/341/323/354C/313/34 of IPC and Section 66/67A of the I.T. Act against all the accused persons and Section 498A/34 of IPC against accused No.1 to 3.

On 19.09.2024 the defacto complainant had come up with the application for further investigation on the ground that investigating agency had failed to investigate the complainant's case of attempted murder. That investigating agency did not seize a number of electronic gadgets though one letter dt.21.03.2024 was sent to the agency. That a number of streedhan articles like gold, diamond, silver, costumes, utensils, wrist watches, trolley bag, costly pens and ladies handbags are yet to be recovered. It was further stated that IO of this case was informed of the streedhan articles which are yet to be seized by the said letter dt.21.03.2024.

During the course of hearing, Ld Advocate for the complainant submitted that investigation is incomplete as serious allegations of attempted murder was not duly enquired. gold and diamond jewellerys, costly pens from the house of Mont Blanc and Waterman are yet to be seized.

Strong objection was raised from the side of the accused and it was submitted that investigation was completed long back. The entire search and seizure operation was carried

out in presence of the defacto complainant at the matrimonial house and bank. That defacto complainant is deliberately claiming personal items belonging to the accused persons in the garb of investigation. That application has been filed malafide and that application regarding return of the seized items are also pending. Lastly, it was submitted that present application being harassing should be rejected.

Ld PP in-charge representing the state submitted that thorough investigation and search was conducted by the agency. Huge number of items and digital gadget were recovered. The mobile phones, pen drives and other devices were sent for forensic examination. It was further submitted that specific charge U/s 406 of IPC was brought against the accused persons which will address the concern of the complainant regarding misappropriation of streedhan articles. The Court was further invited to take up framing of charge against the accused persons as per direction of the Hon'ble Court in CRR No. 2936/2024.

Perused the materials on record including the e-mail intimation enclosed as annexure P1 in a petition dt.11.11.2024 filed by the defacto complainant. The e-mail dt.21.03.2024 which was supposed to have been sent to the O/C of Manicktala PS bears the same e-mail as addresser and addressee being [swanalisaha11@gmail.com](mailto:swanalisaha11@gmail.com). E-mail id of the Police Station is not evident from the said letter.

However, the list of unrecovered streedhan articles which are listed in the said annexure dt.21.03.2024 are ear ring (jhola) 1 pair, ear ring tops – 2 pairs, diamond locket – 1 No., silver ear ring – 1 pair, sindoor case with plates – 2 cases + 3 plates, silver coins, 2 costume pearl sets, crockery sets – 5 sets, trolley bag – 1 No., wrist watches – 12 Nos., Mont Blanc pen– black body – 1 No., Waterman pen black body – 1 No., Cross pen – silver body – 1 No. and ladies handbags – 2 Nos.

The seizure list dt.12.03.2024 which relates to the seizure of streedhan items at FE-167, Sector III, Saltlake City lists 63 items (62 items) which were seized from the matrimonial home of the complainant. However, the following seizures are noted which can be well connected with the list dt.21.03.2024.

**The Court finds the following articles :-**

- No. 14- three pairs of gold looking ear tops – 1.4gms, 2.1gm & 1.6gm
- No. 20- one pair of gold looking ear ring (jhola) – 10.6gm
- No. 28- three silver made sindoor case along with 2 silver plates and a silver sindoor khathi.
- No. 32 & 37- Pearl fitted costume jewellery with necklace and ear ring.
- No. 43- 4 silver coins in a single pack
- No. 52- Five sets of crockery sets.
- No. 58- Six ladies wrist watches
- No. 57- Seven ladies purse

In the letter dt.21.03.2024, it was stated that several branded pens were noticed in the cupboard of Dr.Kaushik Kundu, Dr. Anirban Kundu and Suman Dutta and collection of several bags were from the almirah, cupboard of Mrs. Sudeshna Kundu. Pertinent to mention that defacto complainant had failed to provide adequate description, weight or the correct product particulars or brand of the items in her letter or in the complaint. The defacto complainant was personally present during the seizure and had noted the pens and bags during the search but failed to stake claim to those items on the date of seizure. Inclusion of items which were overlooked earlier by the defacto complainant may be termed as after thought. No document regarding the jewellery or the pens or any of the items could be presented before this Court for the purpose of claiming ownership for which confidence of the Court is not

aroused.

During the course of hearing, Ld Advocate for the complainant submitted that I-pad, laptop and mobile phones and several pen drives of the accused husband was not seized. However, report of the IO dt.02.08.2024 and the case diary discloses that on three different dates seizure was conducted firstly at the residence of the accused, flat at 1<sup>st</sup> floor, 372/BL-CC Ramkrishna Pally, New toner and also at Tata Medical Center being work place of the accused No.1. There was seizure of 11 smart mobile phones, one laptop, one hard-drive and one pen drive. All those digital evidence were sent to Cyber Forensic and Digital Evidence Examiner's Laboratory, CID.

The report from the laboratory is awaited. Whether seizure of all and every electronic devices are necessary not ought to be decided by the IO of this case in reference to the forensic Report. Random seizure of all devices is not called for.

In the case of **K. Vadivel v. K. Shanthi, 2024 SCC OnLine SC 2643**, Hon'ble Apex Court observed that "the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation".

So far the allegation U/s 307 of IPC is concerned, the defacto complainant did not provide anything new in her application nor placed any materials which may justify further investigation.

In the case of **Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 1**, it was observed that "...Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law".

In the instant case no such material has been placed which calls for applying such discretion.

Hence, the application for further investigation stands rejected.

To 05.03.2025 for framing of charge and hearing of petition seeking return of seized items.

*Dict. & Corr.by me,*

Addl. Dist. & Sess. Judge, 2<sup>nd</sup> Court,  
*Sealdah.*

Addl. Dist. & Sess. Judge, 2<sup>nd</sup> Court,  
*Sealdah.*