

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2917 OF 2019

Ambalal Modalal Rawal ..Petitioner
V/s.
The State of Maharashtra & Ors. .. Respondents

Mr. R.D. Suryavanshi, for the Petitioner.
Mrs. A.S. Pai, APP for the Respondent-State.
Mr. S.V. Dighe, PSI, Ulhasnagar Police Station.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 15th JULY 2019

P.C.

1. Heard Mr. Suryawanshi, learned counsel for the petitioner and Ms. Pai, APP for the Respondent-State.

2. The petition is filed seeking following reliefs:-

“a) this Hon'ble Court be pleased to issue writ of mandamus, order, directions or any other appropriate writ in that nature, directing the Respondent No. 4 not to harass the Petitioner in the name of recovery of gold without any proper proof and evidence and to follow the guidelines laid down in circular dated 24.7.2009

and 18.8.2009 issued by the Commissioner of Police and Deputy Inspector General of Police (L&O) respectively;

- b) this Hon'ble Court be pleased to issue writ of mandamus, order, directions or any other appropriate writ in that nature, directing the Respondent No. 2 to initiate departmental proceeding against the Respondent No. 4 and take stern action against him for violation of guidelines in circular dated 24.7.2009 and 18.8.2009 issued by the Commissioner of Police and Deputy Inspector General of Police (L&O) respectively;
- c) this Hon'ble Court be pleased to direct the Respondent No. 2 to transfer the investigation of C.R. Nos. I-34/2019 registered with Ambernath Police Station, C.R. No. I-87 of 2019 registered with Ambernath Police Station and C.R. No.I-305 of 2018 and C.R. No. I-84 of 2019 registered with Shivaji Nagar Police Station from the Respondent No. 4 and handover the investigations of these crimes to any other officers as the Respondent No. 2 deem fit and proper.”

3. The petitioner is a businessman and running a Jewellery Shop

in the name and style as Swarandeeep Jewellers, 5/73 Mangal Bhawan, Sahad Phatak, Ulhasnagar-421001.

4. It is the case of the petitioner that on 21.05.2019 he received a call on his mobile phone from respondent No.2-Police Sub-Inspector and was informed that there is a case registered against him under Section 379 of the Indian Penal Code and directed him to visit the Police Station. The respondent No.4 has also pasted the summons on the conspicuous part of the house of the petitioner. It is further case of the petitioner that by Advocate's Notice dated 24.05.2019 he called upon respondent No.4 to strictly follow the guidelines mentioned in the circular issued by the Higher Authorities and requested the respondent No.2 to record the FIR, panchnama accordingly. The petitioner also assured to give cooperation to respondent No.4. The petitioner perused the copy of the C.R. I-31 of 2019 registered on 18.01.2019 with Ambarnath Police Station at the instance of one Lata Sandeep Kalvigate. The petitioner also learnt that the said complaint mentioned that two unknown persons snatched her golden mangalsutra weighing about 19 grams. The petitioner also learnt that the accused in the said crime was arrested and the golden mangalsutra was recovered from him.

In short, it is the case of the petitioner that the golden mangalsutra was recovered by respondent No.4 in CR No.34 of 2019 at Ambernath Police Station despite this respondent No.4 is harassing the petitioner.

5. Mr.Suryawanshi, in order to support his contention has invited our attention to the remand application/orders dated 19.05.2019, 22.05.2019 and 25.05.2019. Mr. Suryawanshi's contention is supported through these documents inasmuch as this remand application shows that the accused Jafar Manoj Irani was arrested in the CR No.34 of 2019 and the golden mangalsutra was recovered from him.

6. However, it is the case of the prosecution that earlier the FIR bearing C.R. No.305 of 2018, another case was registered on 13.12.2018 at Shivaji Nagar Police Station when the accused Jafar Manoj Irani was arrested in C.R. No.34 of 2019 registered with the Ambernath Police Station on 18.05.2019. On 25.05.2019 the accused Jafar made a statement under Section 27 and in this statement he acknowledged that earlier in the month of December he snatched one mangalsutra and chain of one lady. He also

showed his willingness to show the jewellery shop where he sold this mangalsutra. The accused Jafar Irani accordingly shown the petitioner's goldsmith shop where he has sold the golden mangalsutra, which he snatched in the month of December 2018. It is the specific case of the prosecution that though the mangalsutra in C.R.No.34 of 2019 was already recovered, the disclosure by the accused in a Panchnama under Section 27 of the Indian Evidence Act was in respect of incident of 2018 and therefore respondent No.4 was not aware, at that time, about registration of C.R. No.305 of 2018 with Shivaji Nagar Police Station in respect of snatching of golden mangalsutra and golden necklace. He accordingly, issued notice to the petitioner under Section 41 of the Cr.P.C.

7. The aforesaid facts show that the petitioner's contention that Section 41 notice is issued to him despite the fact that the recovery of the mangalsutra in C.R. No.34 of 2019 is half truth. The said notice is given in respect of the incident of December 2018. However, we also found that the said notice is not in compliance with the guidelines issued by the Higher Authorities. Ms.Pai, learned APP on instructions makes a statement that a fresh notice would be issued to the petitioner under Section 41 of the Cr.P.C. in compliance with the provision of the Cr.P.C. She also submitted

that the Investigating Officer of subject crime would strictly comply with the guidelines contained in Circular dated 18.08.2009 issued by Inspector General of Police, copy of which is annexed at Exhibit-I, Page-79. Statement accepted as undertaking to this Court.

8. In the light of the above we are of the opinion that the grievance raised in the writ petition, no more survives. The petition stands disposed of.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)