

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 3rd OF SEPTEMBER, 2022

WRIT PETITION No.5466 of 2017

Between:-

- 1. RUCHI AGARWAL @ GUDDI @
RENU W/O LATE SHRI RAJKUMAR
AGARWAL D/O LATE RAMESH
CHAND GOYAL AGE 45 YEARS R/O
I/F BHAGWAN DAS SHOE
COMPANY, DAHI MANDI, DAULAT
GANJ LASHKAR GWALIOR
(MADHYA PRADESH)**
 - 2. RAM GOYAL S/O LATE SHRI
RAMESH CHAND GOYAL AGE 47
YEARS, R/O NEW FORT VIEW
COLONY, KOTESHWAR ROAD
GWALIOR (MADHYA PRADESH)**
 - 3. SHYAM GOYAL S/O LATE SHRI
RAMESH CHAND GOYAL AGE 47
YEARS R/O SODA KA KUA,
KILAGATE GWALIOR (DELETED
VIDE ORDER DATED 7/3/2022)
THROUGH LEGAL
REPRESENTATIVES:**
- A. SMT. NEETU GOYAL W/O LATE
SHRI SYAM GOYAL AGE 46 YEARS
(WIFE)**

- B. SHIVANI GOYAL D/O LATE SHRI SHYAM GOYAL AGE 23 YEARS (DAUGHTER)**
- C. PRACHI GOYAL D/O LATE SHRI SHYAM GOYAL AGE 19 YEARS (DAUGHTER)**
- D. KARTIK GOYAL S/O LATE SHRI SHYAM GOYAL AGE 11 YEARS MINOR THROUGH GUARDIAN MOTHER SMT. NEETU GOYAL W/O LATE SHRI SHYAM GOYAL (SON)**

BOTH ARE R/O SODA KA KUAN, KILAGATE, GWALIOR

.....PETITIONERS

(BY SHRI R.K. SONI - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH COLLECTOR GWALIOR.**
- 2. DISTRICT AND SESSION JUDGE, GWALIOR.**
- 3. IN CHARGE POLICE STATION PADAV GWALIOR**
- 4. IN CHARGE MALKHANA/CJM GWALIOR**
- 5. TREASURY OFFICER, MOTI MAHAL, GWALIOR**

.....RESPONDENTS

(SHRI C.P. SINGH – PANEL LAWYER FOR THE STATE)

This petition coming on for hearing this day, the Court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:

A. The petitioner entitled compensation Rs.80 lacs from the respondents due to loss of gold and silver ornaments from the custody of the court as same found proved in enquiry by the District Judge Gwalior and registered FIR at Crime No.290/2017 dated 07.06.2017 under section 409 of IPC.

2. The necessary facts for disposal of the petition in short are that Police Station Gwalior has registered Crime Nos.177/1988 and 178/1088 for offence under Sections 302, 396, 307 and 460 of IPC. According to the prosecution case, the complainant Prabhudayal Gupta lodged a report that at 5:30 in the morning that his cousin brother Satish Goyal came rushing to his house and was shouting that something has happened to his uncle and aunty (*Chacha - Chachi*). He, therefore, rushed to the house of his cousin brother and found that his uncle Rameshchand was lying in an unconscious condition and blood was oozing out from his body. The entire belongings of the room were lying here and there. The chest was also opened and the contents were missing. His aunty Smt. Basanti Devi was lying in a small room situated in front of the kitchen and he found that she has already expired. She was having number of injuries on her head. Accordingly, FIR was lodged that some miscreants have taken away the valuables after committing murder of his aunty and

after causing serious injuries to his uncle. The police seized gold and silver ornaments from accused Bahadur on 25/11/2018. The seized gold and silver ornaments were kept in the treasury. The trial of the accused persons was concluded on 13/5/2008. After the conclusion of the trial, the petitioners filed an application under Sections 451, 457 of Cr.P.C. before the Trial Court for release of the ornaments and accordingly, order dated 19/11/2013 was passed, thereby directing for release of the ornaments on execution of personal bond in the sum of Rs.30,00,000/-.

3. Since the Trial Court had directed that the applicant and Satish Goyal shall be given joint possession of the ornaments, therefore, the petitioners preferred M.Cr.C. No.10372/2013, which was decided by order dated 18/3/2016 with the following observations:-

As discussed above, it is for the parties to get their separate share declared from the competent succession court and, therefore, the order dated 19/11/2013 passed by the trial court is to be modified because the respondent No. 2 is not ready to execute a joint interim custody bond. However, looking to joint succession certificate, it may be presumed that the applicants and the respondent No. 2 have equal share in the property. Hence, order is modified with direction that at present valuation of all the ornaments be obtained by the trial court by calling some goldsmith, etc. and after getting complete valuation of each of the articles, interim custody of 3/4th ornaments on the basis of valuation be given to the applicants on furnishing the interim custody bond of amount (as assessed) by the applicants before the trial court along with surety bond of the same amount then 3/4th portion of the articles including golden and silver ornaments of the deceased be given on temporary custody to the applicants till demanded by the trial court.

However, it is made clear that respondent No. 2

would be free to get the single succession certificate from the competent succession court and thereafter up to that portion for which he is declared to be successor of the deceased that portion shall be given by the trial court to the respondent No. 2 on interim custody, if he applies for the same and at that time it is found that share of the respondent No. 2 is not 1/4th or it is more then the entire jewellery shall be called by the trial court from the applicants again and shall pass an appropriate order of interim custody. Also if respondent No. 2 claims remaining 1/4th share of the ornaments then on making an application the trial court would be free to pass an appropriate order of interim custody.

4. Thereafter, the petitioners moved an application before the Trial Court for release of the ornaments. Accordingly, by order dated 28/3/2016 the Trial Court directed that the ornaments may be called from the treasury and their valuation be done before handing over the property to the custody of the petitioners. Thereafter, the ornaments were never produced before the Trial Court. Since the treasury was not producing ornaments, therefore, by order dated 4/7/2016 the Trial Court also requested the District and Sessions Judge in this regard. On 6/7/2016 an information was received from the office of District and Sessions Judge, Gwalior that a departmental enquiry has been instituted against the then Malkhana Nazir, Shankarlal and separate proceedings are being done as the gold ornaments are not traceable. Thereafter, the petitioner also filed M.Cr.C. No.356/2017 before this Court for early disposal of the pending case and accordingly, by order dated 28/2/2017 the Trial Court was directed to dispose of the case as early as possible, preferably within a period of six months from the date of receipt of a certified copy of the order. After an enquiry, the District and Sessions Judge found that the

seized ornaments were not found in the treasury and accordingly, an FIR was lodged against the concerning Nazir and other unknown persons. The valuation of the property as per the FIR was Rs.80,00,000/- and it was found that Malkhana Nazir has committed an offence under Section 409 of IPC. From the FIR in Crime No.290/2017 registered at Police Station Padav, District Gwalior, it is clear that the gold ornaments went missing from the treasury itself and now they are not recoverable. Thereafter, the petitioners filed an application under Section 482 of Cr.P.C. which was registered as M.Cr.C. No.1336/2015 complaining non-arrest of accused Uma and Laxman, who were involved in commission of dacoity. The said petition was disposed of by order dated 2/12/2016 with the following observations:-

It is apparent from the record that since the charge sheet was filed against the absconding accused persons under Section 299 of Cr.P.C and, therefore, perpetual arrest warrant have been issued by the trial Court.

Instead of keeping this petition pending before this Court, it is directed that the SHO, Police Station Gwalior shall submit the progress report after every three months before the trial Court with regard to the steps taken by him for arresting the absconding accused persons.

This petition is being disposed of with a hope that every sincere efforts will be made by the SHO Police Station, Gwalior to execute the perpetual arrest warrants which have been issued by the trial Court.

With the aforesaid observations, the petition is disposed of.

5. It is further submitted that the FIR in Crime No.290/2017, which was registered at Police Station Padav, District Gwalior, was lodged on 7/6/2017, but the police authorities have failed to trace out the real

culprits and they also failed to recover the stolen articles.

6. It is not out of place to mention here that police has registered FIR in Crime No.290/2017 at Police Station Padav, District Gwalior for offence under Section 409 of IPC. The gold and silver ornaments seized by the police in Crime Nos.177/98 and 178/98 and they were kept in the treasury. Now they are missing.

7. The only question for consideration is as to whether the State Government can be held liable for payment of cost of gold and silver ornaments to the petitioners or not ?

8. The Supreme Court in the case of **Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and another** reported in **AIR 1977 SC 1749** has held as under:

5. Coming now to the decision of the High Court that the articles in question were never actually produced by the police before the Court, we find that this is factually incorrect. It appears from the finding of the High Court that immediately after the articles were recovered by the police and the police submitted a charge-sheet to the Chief Judicial Magistrate, it produced the articles before the Court, but the Court directed the Sub-Inspector to retain the property until the same is verified and valued by a goldsmith for which the Court moved the higher authorities for sanction of necessary funds. The Sub-Inspector was also directed to bring the goldsmith. In these circumstances the Sub-Inspector took back the articles and kept them in the Guard Room of the police station. It would thus appear that the articles were actually produced before the Court but were retained by the Sub-Inspector under the directions of the Court. A production before the Court does not mean physical custody or possession by the

Court but includes even control exercised by the Court by passing an order regarding the custody of the articles. In the instant case when once the Magistrate, after having been informed that the articles were produced before the Court, directed the Sub-Inspector to keep them with him in safe custody, to get them verified and valued by a goldsmith, the articles were undoubtedly produced before the Court and became custodia legis.

6. It is common ground that these articles belonged to the complainant/ appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. We do not agree with the view of the High Court that once the articles are not available with the Court, the Court has no power to do anything in the matter and is utterly helpless.

7. In the instant case it is clear that the value of the property stolen is easily ascertainable on the materials on the record and does not admit of any difficulty. It is true that in the complaint Ext. 9 the total value given by the appellant comes to Rs. 13,320/-. But this cannot be a correct criterion because the Court has to calculate the value of only that property which has been recovered from the accused and seized by the police. It may be that some property may not have been recovered at all. The correct principle, therefore, to apply in this case would be to find out if there is any material to show the value of the articles actually seized by

the police from the possession of the accused. It would appear from Ext. 1 the charge-sheet that the total value of the articles which were recovered from the five accused comes to Rupees 10,049/-, which may be rounded off to Rs. 10,000/-. Exhibit 34 which is the report lodged by the police regarding the property having been stolen also shows the value of the property kept in the trunk to be Rs. 10,050/-. This will appear from Ext. 34 which gives a detailed and exhaustive list of the articles kept in the trunk and the value thereof. In these circumstances, therefore, it can be safely held that the value of the property recovered from the possession of the five accused and stolen from the house of the complainant was Rs. 10,000/-. It is also clear that in the instant case, no plea had been taken by the State that the property was lost in spite of due care and caution having been taken by it or due to circumstances beyond its control. On the other hand, while all the articles were stolen from the trunk kept in the Guard Room of the police station, except the formality of a report having been lodged, no action seems to have been taken by the State against the Sub-Inspector or the officers who were responsible for the loss of the property, even to this date. In these circumstances, therefore, the State cannot be allowed to successfully resist the application filed by the appellant. The appellant is entitled to receive the cash equivalent of the property lost which has been held by us to be Rs. 10,000/-, and this amount should be paid to the complainant by the State.

9. According to the respondents themselves, the cost of the seized ornaments was Rs.80 Lacs. Since the value of the goods has been ascertained by the respondents themselves, therefore, the respondent No.1 shall pay the compensation of Rs.80 Lacs.

10. Now the question for consideration is as to whether the entire compensation amount is payable to the petitioners or Satish Goyal also who has also filed W.P.No.27299/2018 for the similar relief is also entitled?

11. It appears that the petitioners and Satish Goyal are fighting with each other claiming their share in the property. In W.P. No. 27299/2018 Satish Goyal has claimed 1/4th share in the compensation amount. This Court while deciding this writ petition cannot adjudicate the entitlement of the petitioners.

12. Accordingly, it is directed that in case if the petitioners and Satish Goyal who has filed W.P.No.27299/2018 obtain the succession certificate for their share in the compensation amount, then compensation shall be released as per the succession certificate.

13. With aforesaid observations, the petition is finally **disposed of**.

(G.S. AHLUWALIA)
JUDGE

Arun*