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WA-1125-2017

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 20th OF JULY, 2026WRIT APPEAL No. 1125 of 2017*J.M.F.C. JOURA**Versus*

*SHYAM SINGH S/O SHRI BAL VANT SINGH THR. POWER OF
ATTORNEY HOLDER JAGDISH SINGH SIKARWAR AND OTHERS*

.....
Appearance:

Shri Sohit Mishra, Govt. Advocate for State.

Shri Sandeep Singh Bhadauria, Advocate for respondent No.1.

.....
ORDER

Per. Justice Gurpal Singh Ahluwalia

Heard on I.A. No.2823/25. This is an application for recall/modification of order dated 6/3/2020 passed in W.A. No.1125/2017.

2. It is submitted by counsel for appellant that appellant is aggrieved by Direction No.11(ii), as mentioned in the impugned order passed in W.A. No.1125/2017 and R.P. No.579/2017.

3. In order to understand the controversy, this Court is of considered opinion that background of the case is to be considered.

4. Respondent Shyam Singh filed W.P. No. 5831/2011 seeking the following reliefs:-

"The petitioner therefore, most humbly prays that this Hon'ble



Court may kindly be pleased to allow the petition and thereby issuing a writ/order to quash/correct the impugned order as contained in Annexure — P/1 and direct the respondents to handover the original property/ornaments made of metal gold to the petitioner or the present market value of those ornaments which were seized by police and kept in the custody of J.M.F.C, Jaura and were put in the Sub- Treasury Jaura, be paid to the petitioner as compensation."

5. It is the case of respondent that a theft took place in his house in the midnight of 29/7/1978 at Village Tor, Tahsil Jaura, District Morena, in which ornaments of gold and silver belonging to respondent's neice and *Bhabhi* lying in suitcase and box were stolen by unknown thieves after breaking the wall of the premises. The FIR of theft was lodged at Police Station Devagarh, Tahsil Jaura, District Morena immediately after the incident. During investigation, Police arrested accused persons and seized the stolen ornaments as per various seizure memos. All the accused persons were acquitted by learned JMFC, Jaura, District Morena by judgment dated 1/11/1990 and it was observed that the property, as mentioned in seizure memos Annexures P/5, P/6 and P/10 shall be handed over to complainant/respondent after expiry of period for filing appeal. It was also directed by the trial Court that since there is a dispute with regard to the property seized vide seizure memo Annexure P/14, therefore, Manmohan (PW9) may present a civil suit before the Civil Court to get the question of ownership decided and if no suit is preferred, then after expiry of period of appeal, the property/ornaments shall be delivered to the respondent. Manmohan preferred an appeal before Sessions Judge, Morena and it was prayed that seized ornaments belong to him and, therefore, the direction given by trial Court for handing over the ornaments to respondent may be



quashed and the seized ornaments may be returned back to him. Similarly, respondent also preferred an appeal against the judgment passed by learned JMFC before the Court of Sessions, Morena. The appeal filed by Manmohan, as well as, respondent were consolidated and were remanded back for necessary action. Thereafter, trial Court passed another order dated 12/3/1998 directing that ornaments mentioned in seizure memo (Annexure P/15) may be returned back to complainant. Manmohan filed a suit before Civil Judge Class I, Jaura District Morena, which was registered as Civil Suit No. 29A/98. Said suit was dismissed on 21/9/2001 on account of non appearance of plaintiff or his Advocate. On 24/1/2002, MJC No.02/2002 was filed for restoration of suit which was also dismissed. One more MJC No.04/2004 was filed for restoration of previous MJC and that too was dismissed. Appeal was also preferred by Manmohan before III ADJ, Morena, but it was again dismissed on account of non appearance. On 16/3/2011, in Original Case No. 78/82 इ.फौ. , Property/Article No.174/88 was called by JMFC, Jaura, District Morena from Sub Treasury Jaura, District Morena. It was found that ornaments kept in the custody of State Government have been replaced by fake ornaments and, accordingly, they were not accepted by respondent. Under these circumstances, petition was filed to quash the order dated 29/3/2011 passed by JMFC Jaura, District Morena, as well as, for handing over original property/ornaments made of gold to respondent or seeking a direction that market value of those ornaments which were seized by Police and kept in the custody of JMFC Jaura, District Morena and were put in Sub Treasury Jaura, District Morena be paid to respondent. The said



writ petition was ultimately decided by learned Single Judge by order dated 27/6/2017 and following observations were made:-

"27-06-2017

Shri Jitendra Sharma, learned counsel for the petitioner.

Shri Anil Shrivastava, learned Panel Lawyer for the respondents-State.

Heard.

Petitioner has filed this writ petition seeking indulgence of the Court in directing the respondents to handover original property/ornaments made of metal gold to the petitioner or for payment of compensation as per present market value of those ornaments which were seized by the Police and kept in the custody of JMFC Jaura and were put in the Sub-Treasury Jaura.

There is no satisfactory explanation from the State as to the replacement of the items which were inspected from the authorities of the State and in absence of any satisfactory reply, this Court has been constrained to pass a detailed order instead of relegating the matter to the Civil Court for decision.

Learned counsel for the petitioner submits that he will be satisfied if an enquiry is directed to be conducted by the appropriate authority in the matter of mis-appropriation of the property of the petitioner which was seized vide Japti Panchnama Annexure P/5 and Annexure P/6 dated 10.11.1978. According to him, these articles were changed either at the instance of JMFC Jaura or in the Sub-Treasury and in support of this contention, he has placed reliance on the ordersheet dated 16.03.2011, in which it is mentioned that as per Panchnama Ex.P/10, two *dastane* of gold of about 45 grams were to be forwarded to complainant Shyam Singh. As per *Muddemal Parchi*, chain of *dastane* was broken, but when said packet was opened, after preparation of Panchnama, the chain was not found to be broken. It has also come on record that goldsmith had examined those articles and found them to be artificial. It has also come on record that a slip dated 14.02.1994 prepared by JMFC was found inside the sealed envelope, in which it is mentioned that those *dastane* were artificial. This ordersheet gives rise to following bona fide questions :-

1) What was the occasion for JMFC to prepare a slip and insert in the sealed envelope on 14.02.1994 when the said articles were admittedly seized on 10.11.1978. Therefore, the role of JMFC, who was holding the office at Jaura on 14.02.1994, becomes suspicious. In this regard, the Registrar General of this High Court is directed to conduct an enquiry against said JMFC and enquire as to what was the occasion for him on 14.02.1994 to insert a slip as to purity of the article and on what basis he had put that slip in the sealed envelope on 14.02.1994. Let a copy of this order for this purpose be forwarded to the Registrar General of the High Court immediately.

2) As far as the role of Sub-Registry, Jaura is concerned, that



also needs to be investigated and for this purpose, this Court is of the opinion that let appropriate case be registered by the Crime Investigation Department of Police against the accused persons and let CID enquire into the role of each of the persons including the petitioner in replacement of the gold items with artificial items as have been mentioned in ordersheet dated 16.03.2011 by the Court of ACJM Jaura, District Morena.

It is made clear that the petitioner shall be afforded an opportunity of hearing both before CID as well as Registrar General while conducting enquiry against the concerned JMFC. It is also made clear that in case it is found that the petitioner is not a delinquent person and the items as per the petitioner were examined before sealing the original gold items or found to have been replaced either in the office of JMFC or in the Sub-Registry, then the petitioner will have right to seek adequate compensation from the delinquent. This petition is disposed in above terms.

Certified copy as per rules"

6. Being aggrieved by the said order, W.A. No.1125/2017 (present writ appeal) was preferred which was disposed of by order dated 6/3/2020 by deleting certain observations made by the writ Court, but affirmed Direction No.2 by which the writ Court had directed that appropriate case be registered by the Crime Investigation Department of Police against the accused persons and let CID enquire into the role of each of the persons including the petitioner in replacement of the gold items with artificial items as have been mentioned in ordersheet dated 16.03.2011 by the Court of ACJM Jaura, District Morena.

7. By filing I.A. No.2823/25, it is claimed by counsel for appellant that since the FIR in respect of same offence was already registered and by judgment and sentence dated 12/10/2019 the accused person was acquitted, therefore, the Direction No.2 which was given by learned Single Judge in W.P. No.5831/2011 and affirmed by writ appellate Court by impugned order dated 6/3/2020 be modified and the direction to lodge the FIR may be recalled.



8. This Court on 3/7/2026 had passed the following order:-

*"Shri Ankur Mody - Additional Advocate General with Shri C.P.Singh - Advocate for the appellants/State.
Shri Sandeep Singh Bhadoriya - Advocate for the respondents.*

Heard on I.A.No.2823/2026.

2. This is an application for modification of order dt.06.03.2020 passed by the Co-ordinate Bench of this Court in this case.

3. It is submitted by counsel for the appellants that Writ Court as well as Writ Appellate Court had directed for registration of FIR by the CID, but the said orders were passed without realising the fact that the FIR was already lodged with regard to the replacement of gold ornaments and the trial has resulted in acquittal of the accused persons.

4. To buttress his contentions, counsel for the State has referred to copy of judgment dt.12.10.2019 passed by J.M.F.C. Jaura District Morena in Criminal Case No.300369/2006. Accordingly, it is prayed that directions issued by this Court for registration of FIR by CID may be recalled as accused persons have already been acquitted.

5. The submission made by counsel for the appellant/State that the directions were issued by the Writ Court as well as Writ Appellate Court without realising the fact that FIR was already lodged and the criminal trial has resulted in acquittal is shocking and mischievous. When a specific question was put to Shri Ankur Mody as to whether the State of Madhya Pradesh or any of the respondents had pointed out in their return about registration of FIR and pendency of trial or not, then it was fairly conceded by Shri Ankur Mody that the factum of registration of FIR and pendency of trial was never brought to the notice of Writ Court either verbally or in writing. From the record of the Writ Court, it is clear that Sub Treasury Officer, Jaura and Collector Morena were initially impleaded as respondents No.3 and 4. Respondents No.3 and 4 had filed their return, which was supported by an affidavit of Y.S.Bhadoriya, who was in government service. However, the designation which he was holding was not disclosed in that affidavit.

6. It is fairly conceded by Shri Ankur Mody that the factum of registration of FIR and pendency of trial was not disclosed in the return.



7. That is not the end of the matter.

8. I.A.No.2597/2013 was filed by the petitioner - Shyam Singh Sikarwar for impleading the State Govt. as party.

9. By order dt.07.07.2014, the aforesaid application was taken up and it was allowed and notices were issued to the State of Madhya Pradesh. Surprisingly, it is a matter of replacement of ornaments while they were in the safe custody of the State Government, still the State Govt. did not choose to even file the return.

10. By order dt.26.04.2017, the Cause List Section was also directed to reflect the name of Advocate General Office in the cause list in order to enable the State Govt. to give effective assistance to the Court, but it appears that all the respondents were either negligent or they were hand in glove with some unknown persons, who were vitally interested in original gold ornaments. Nothing was brought to the notice of the Court and ultimately the petition was finally disposed of by learned Single Judge vide order dt.27.06.2017 by issuing a direction to the CID to register the FIR. It is not out of place to mention here that even on that day, the trial was pending, as the trial stood concluded on 12.10.2019.

11. Writ Appeal was filed on 20.11.2017 and even in the Writ Appeal, it was not disclosed that the FIR in respect of the same incident has already been lodged and the trial is going on. Thus, it is clear that the Writ Appeal, which was filed, was with the solitary intention to get rid of the liability by suppressing the material facts from the court. The Writ Appeal was finally disposed of by order dt.06.03.2020.

12. It is not out of place to mention here that by that time the trial had already concluded. From the record, it is clear that the Writ Appeal was listed on 24.11.2017, 13.12.2017, 15.01.2018, 02.02.2018, 22.08.2019, 30.08.2019, 06.09.2019, 13.09.2019 and 27.09.2019. i.e. during the pendency of trial. The judgment was passed in the trial on 12.10.2019, but the factum of registration of FIR and pendency of trial was deliberately suppressed and now it was submitted that the directions which have been issued by the Court are without realising the fact that trial has already resulted in the acquittal of accused.

13. Why the officers suppressed the material facts, why respondents No.3 and 4 treated the return as a sheer formality, why the State Govt. in spite of the notice issued by the Writ Court, did not file the reply, are certain questions which are required to be replied.

14. Accordingly, Shri Mody, Additional Advocate General prays



for and is granted two weeks' time to file specific reply on the following issues :-

(i) Why the respondents No.3 and 4 did not bring to the notice of Writ Court with regard to registration of FIR and pendency of trial ?

(ii) Why, while filing Writ Appeal, registration of FIR and pendency of trial was never disclosed either in the form of grounds or additional facts or during course of arguments.

(iii) As already pointed out, at least on nine occasions, the Writ Appeal was listed and even on those dates also, respondents/State authorities did not inform the writ appellate court about registration of FIR.

(iv) On 23.01.2020 and 06.03.2020, the Writ Appeal was listed, but even then, the factum of registration of FIR and acquittal of accused was not brought.

15. Although Shri Ankur Mody tried to justify his stand that it was not deliberate attempt on the part of the respondents in not disclosing the aforesaid fact and at the most it can be said to be in ignorance of factual position, but unfortunately, said submission cannot be accepted. Whenever a notice is issued to respondents, then it is only with the solitary intention that the respondents shall place all the facts on record after doing an extensive homework. If the State authorities have treated filing of reply as a ritual or sheer formality, then it is for the State Govt. to consider as to whether the State Govt. is being represented properly or not.

16. When a specific question was put to Shri Ankur Mody as to whether filing of reply is a sheer formality or the OIC must place all the facts after doing the homework, then rightly so it was admitted by Shri Mody that filing of reply is not a formality. Therefore, the respondents shall also file their reply as to whether the conduct of Shri Bhadoriya, who had filed the reply on behalf of respondents No.3 and 4 as an OIC, was proper in not disclosing the fact of registration of FIR and pendency of trial or not and if his conduct was not proper, then what action is proposed against him.

17. The record of the trial court has already been received. The office is directed to keep it in a sealed cover alongwith the record of this Writ Appeal.

18. List this case on 20.07.2026.

19. It is made clear that the reply should be supported by the



affidavit of a senior officer above the rank of Collector Morena because Collector Morena was a party in the writ petition but has shown complete disregard to the lis in question."

9. In compliance of the said order, reply has been filed vide Document No.11261/26 and it is mentioned that OIC of the case has expired on 13/2/2026, therefore, now it is not possible to probe into the reasons for not including the information regarding lodging of FIR and pendency of trial in the reply which was filed before the writ Court.

10. Now the only question for consideration is as to whether this Court should modify the order dated 6/3/2020 thereby recalling the direction to register FIR, or can pass some appropriate order in the facts and circumstances of the case ?

11. Counsel for appellant, as well as, respondent were requested to address this Court as to whether this Court can modify the direction to lodge FIR by directing the CID to conduct further investigation.

12. Counsel for respondent, all the time tried to impress upon this Court by submitting that respondent could not get original ornaments but did not assist the Court on legal side. Similarly, counsel for appellant was not in a position to assist the Court on legal side. Under these circumstances, this Court is left with no other option but to consider the facts and circumstances of the case on its own.

13. A peculiar circumstance has arisen in the case where although gold ornaments were recovered and seized by the Police and were kept in Sub Treasury, Jaura, District Morena, but ultimately when the box was opened, it was found that they were replaced by fake ornaments. Therefore,



it is clear that the original articles must have been replaced by somebody by fake ornaments.

14. Be that whatever it may be.

15. The question is as to whether this Court can direct for further investigation even after acquittal of accused or not ?

It is made clear that this Court is not intending for directing further investigation against the accused who has been acquitted because if such a direction is given then it would amount to double jeopardy which is not permissible in law.

16. The Supreme Court in the case of P. Manikandan VS. Central Bureau of Investigation and Others reported in 2024 SCC OnLine SC 3808 has held as under:-

"15. The Constitution Bench, while dealing with such an issue, that when such power should be exercised by the Appellate Court in *Ukha Kolhe v. State of Maharashtra*, observed that:

"11. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons."

(Emphasis supplied)

16. In the "*Best Bakery Case*", wherein the Trial Court directed



the acquittal of the accused person in a case of mass killings, the same was upheld by the High Court of Gujarat while dismissing the criminal appeal, this Court, after considering the facts and circumstances of the case, directed the *de novo* trial of the accused person by observing that:

“73. ... We are satisfied that it is a fit and proper case, in the background of the nature of additional evidence sought to be adduced and the perfunctory manner of trial conducted on the basis of tainted investigation a retrial is a must and essentially called for in order to save and preserve the justice-delivery system unsullied and unscathed by vested interests. We should not be understood to have held that whenever additional evidence is accepted, retrial is a necessary corollary. The case on hand is without parallel and comparison to any of the cases where even such grievances were sought to be made. It stands on its own as an exemplary one, special of its kind, necessary to prevent its recurrence. It is normally for the appellate court to decide whether the adjudication itself by taking into account the additional evidence would be proper or it would be appropriate to direct a fresh trial, though, on the facts of this case, the direction for retrial becomes inevitable.”

17. A Three Judge Bench of this Court in *Mohd. Hussain v. State (Govt. of NCT of Delhi)*, held that:

41. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A de novo trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no straitjacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked.

(Emphasis supplied)

18. While relying upon the decision of the Constitution Bench in *Ukha Kolhe* (supra), this court discussed the scope of Section 386 of Cr. P.C. in *Ajay Kumar Ghoshal v. State of Bihar*, to the effect that:

“10. Section 386 CrPC deals with the powers of the appellate



court. As per Section 386(b) CrPC in an appeal from a conviction, the appellate court may : (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be retried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same.

11. Though the word “retrial” is used under Section 386(b) (i) CrPC, the powers conferred by this clause is to be exercised only in exceptional cases, where the appellate court is satisfied that the omission or irregularity has occasioned in failure of justice. The circumstances that should exist for warranting a retrial must be such that where the trial was undertaken by the court having no jurisdiction, or trial was vitiated by serious illegality or irregularity on account of the misconception of nature of proceedings. An order for retrial may be passed in cases where the original trial has not been satisfactory for some particular reasons such as wrong admission or wrong rejection of evidences or the court refused to hear certain witnesses who were supposed to be heard.

12. “De novo” trial means a “new trial” ordered by an appellate court in exceptional cases when the original trial failed to make a determination in a manner dictated by law. The trial is conducted afresh by the court as if there had not been a trial in first instance. Undoubtedly, the appellate court has power to direct the lower court to hold “de novo” trial. But the question is when such power should be exercised...”

(Emphasis supplied)

19. This court in *Nasib Singh v. State of Punjab*, formulated the principles emerging from several decisions on retrial given by this Court:

33. The principles that emerge from the decisions of this Court on retrial can be formulated as under:

33.1. The appellate court may direct a retrial only in “exceptional” circumstances to avert a miscarriage of justice.

33.2. Mere lapses in the investigation are not sufficient to warrant a direction for retrial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed.

33.3. A determination of whether a “shoddy” investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence.

33.4. It is not sufficient if the accused/prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the appellate court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the



evidence and investigatory process.

33.5. If a matter is directed for retrial, the evidence and record of the previous trial is completely wiped out.

33.6. The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice:

(a) The trial court has proceeded with the trial in the absence of jurisdiction;

(b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and

(c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade.

(Emphasis supplied)

20. In the present case, the High Court, after acquitting the appellant, directed the CBI to re-investigate after considering the relevant material and documents on record. A perusal of the judgment reveals that the learned division bench discussed the material on record in depth in arriving at the conclusion that “*this is a case where there is no evidence at all.*” Considering that this was an appeal from a sentence of capital punishment, it was observed:

“15. It is not known on what basis, particularly there is an acute dearth of evidence, the trial court has gone to the extent of awarding death sentence...”

It would be worthwhile to refer to the two succeeding paragraphs as well.

“16. The learned Additional Public Prosecutor would point out the observation made by the trial court, while giving conviction, stating that the sexual abuses against children are increasing; that the child marriage is also on the increase; that there is no protection for the children; that the child who innocently followed the accused, while not knowing fatefully unaware of, had been done to death; that the act of the accused is beastly, the accused is liable to be punished by hanging him to death, is totally illegal, unjust and unwarranted.

16.1 Whether these observations alone, without there being basic evidence connecting the crime and the accused, are sufficient to award a capital punishment?. Only if the evidence establishes the crime as against the accused, while considering the quantum of punishment, they may be relevant considerations. In any event, these factors cannot be consideration to record a finding of guilt as against the accused.”

21. This Court has observed in *Kailash Gour v. State of Assam* that **any benefit accruing from** faulty investigation ought to be given to the accused. The necessary corollary thereof being that simply because the investigation was less than satisfactory, the



accused should not be subjected to the same once more.

43. ... That an accused is presumed to be innocent till he is proved guilty beyond a reasonable doubt is a principle that cannot be sacrificed on the altar of inefficiency, inadequacy or inept handling of the investigation by the police. The benefit arising from any such faulty investigation ought to go to the accused and not to the prosecution. So also, the quality and creditability of the evidence required to bring home the guilt of the accused cannot be different in cases where the investigation is satisfactory vis-à-vis cases in which it is not. The rules of evidence and the standards by which the same has to be evaluated also cannot be different in cases depending upon whether the case has any communal overtones or in an ordinary crime for passion, gain or avarice.

(Emphasis supplied)

22. Having observed as extracted supra, the High Court held that the appellant deserved acquittal. Keeping in view the aforesaid authorities, the question then is, could the High Court have ordered the crime to be re-investigated?

23. Firstly, what must be acknowledged is that there exists a clear difference between retrial and reinvestigation. Retrial implies that the judicial process that starts after the investigation of the crime is complete shall be redone from the start, whereas the latter implies that the police and other investigating authorities are once again required to collect and examine evidence in order to present charges before a Court, so that the trial can commence on such freshly collected evidence."

17. The Supreme Court in the case of **Ankush Maruti Shinde and Others Vs. State of Maharashtra** reported in (2019) 15 SCC 470 has held as under:-

"14. At the same time, we cannot lose sight of the fact that five persons have been killed/murdered, out of whom even one lady was raped. Therefore, it is the duty of the Court to see that the real culprits are booked and are punished. The Court cannot shut its eyes to the aforesaid fact that five persons have been killed/murdered and that there is no fair investigation and because of the lapse on the part of the prosecution/investigating agency in not conducting any investigation qua those four persons who were identified by PW 8 on 7-6-2003 before the Special Executive



Magistrate. The benefit of the lapse in investigation and/or unfair investigation cannot be permitted to go to the persons who are real culprits and in fact who committed the offence. As observed hereinabove, unfortunately, there was no investigation at all with respect to those four persons who were identified by PW 8 in her statement on 7-6-2003. It has come on record and as observed hereinabove, those four persons who were identified by PW 8 on 7-6-2003, which was just after two days of the incident, were other than the appellant six persons who came to be tried. Therefore, we are of the opinion that this is a fit case for further investigation under Section 173(8) of the Code of Criminal Procedure qua those four persons, who were identified by PW 8 on 7-6-2003, the reference of whom is in the statement recorded by PW 13."

18. The Kerala High Court in the case of **M.M. Mani Vs. State of Kerala** reported in 2012 SCC Online KER 14516 has held as under:-

"24."Constitutional protection insulating a person under **Article 20(2) of the Constitution** even to a person tried before a court is applicable only where he has been prosecuted and punished of the offence. Accused person who had been tried of an offence charged against him where it ends in an order of acquittal/conviction, he alone, will be entitled to the insulation from further prosecution in respect of such offence on the principle 'autre fois acquit' or 'autre fois convict' as enjoined and mandated under Section 300 of the Code. In the crime after investigation, previously, on the report filed some accused persons were tried and it had ended in their acquittal/conviction would not constitute any issue estoppel barring further investigation of the crime, and prosecution of offenders not put on trial earlier. The judgment of acquittal/conviction rendered against the accused previously put on trial in the crimes which is further investigated



has relevance only for the limited purpose under Section 43 of the Evidence Act, and nothing more."

19. Thus, it is clear that in special circumstances, this Court can direct for further investigation not *qua* the accused who has been acquitted, but to find out the real culprit.

20. In the present case, there are serious allegations against Sub Treasury, Jaura, District Morena and other Officers in whose custody gold ornaments were kept and gold ornaments were replaced by fake ornaments. If such things are allowed to happen specifically when the ornaments were in the custody of Police/Court, then it is an exceptional circumstance where this Court must exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to direct further investigation even after acquittal of accused. At the cost of repetition, it is directed that further investigation *qua* the accused who has been acquitted is not permissible because it would amount to double jeopardy. Since direction to the CID to register case was passed as the fact that FIR in relation to same offence has already been registered and trial is pending was not disclosed, therefore, this Court is of considered opinion that the said direction requires modification.

21. Accordingly, I.A. No.2823/25 is hereby **allowed** and the Direction as contained in paragraph 11(ii) of the order dated 6/3/2020 passed by co-ordinate Bench of this Court in W.A. No.1125/2017, is hereby **modified**. It is directed that the CID shall take up the matter for further investigation in Crime/FIR No.68/94 registered at Police Station Jaura, District Morena for offence under sections 409, 120B of IPC. However, it is made clear that the



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acquitted accused person namely Narendra Kumar Mahor shall not be subjected to any interrogation or further investigation as it would violate his fundamental right of protection against double jeopardy. Accordingly, in place of Direction No.11(ii) passed in order dated 6/3/2020, it is directed that CID shall conduct further investigation in Crime No.68/94.

22. With aforesaid observations, proceedings are finally disposed of.

23. In compliance of order dated 26/02/2026, the record of the Trial Court was received in sealed cover. Since, this matter has been decided on legal issue without touching the disputed facts, therefore, the sealed record was not opened.

24. Office is directed to return the record to the Trial Court in the same condition.

25. The Trial Court is directed to ensure that manipulations are not done in the record and the same is kept in sealed and safe manner.

(G. S. AHLUWALIA)
JUDGE

(ANURADHA SHUKLA)
JUDGE

(and)