IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Writ Petition No.233 of 2015

Kotak Mahindra Prime Limited
Nashik. .. **Petitioner.**

Versus

The State of Maharashtra
And Another. .. **Respondents.**

Shri. N.S. Ghanekar, Advocate, for petitioner.

Shri. P.N. Mule, Additional Public Prosecutor, for respondent No.1.

CORAM: T.V. NALAWADE, J.

DATE : 14th JULY 2015

ORDER:

1) The petition is filed to challenge condition No.2(i) and (ii) of the order dated 8-1-2015 made by the learned Additional Sessions Judge Aurangabad in Criminal Misc. Application No.188/2014. Both the sides are heard.

2) The petitioner is a finance company and it had given finance for purchasing of sports car to one of the

accused from CR No.I-187/2014 registered in Jawahar Nagar Police Station Aurangabad. The crime was registered for offences under sections 420, 467, 471, 406, 120-B etc. of Indian Penal Code and sections 3 and 4 of the M.P.I.D. Act. There are allegations against accused from whom the vehicle is recovered and seized, that he deceived public at large and he collected money and by using part of this money, he purchased the aforesaid sports car. In view of nature of allegations against the accused it is not difficult to observe that whatever money the accused used for purchasing the car was the stolen property of which definition can be found in section 410 of the Indian Penal Code.

3) In view of these circumstances this Court asked the finance company to give particulars regarding the mode of payment under which the vehicle was purchased. Today, learned counsel has produced on the record the particulars showing that loan of Rs.18.69 lakh was given by the petitioner for purchase of the vehicle valued at Rs.23.08. The accused had made payment of Rs.4,39,001/- which was down payment but the payment was made to

the dealer. For that the accused had deposited the amount directly with the dealer and the petitioner made payment to the dealer. As per the statement and the written statement in respect of the particulars produced on the record, the accused had paid total EMI of Rs.7,21,317/- towards repayment of the aforesaid loan. From these circumstances it can be said that the stolen property of Rs.7,21,317/- has gone into the hands of the finance company, the petitioner. It is public money and the knowledge of the present petitioner has no concern when the point of recovery of stolen property comes in a criminal Court. Learned counsel for the petitioner submits that the petitioner had given loan and it is only recovering the loan amount. This submission is not at at acceptable. The finance company had given loan amount to the dealer but the accused handed over stolen property, money made by him by deceiving public to the finance company and so this submission of finance company is not acceptable.

4) Learned counsel for the petitioner placed reliance on a case reported as **2015 ALL MR (Cri) 2257**

Nagpur Bench **(M/s Shriram Transport Finance Co. Ltd. v. The State of Maharashtra)**. He submits that in this case also custody of the vehicle was given to the finance company on giving indemnity bond. The aforesaid relevant circumstances were not brought to the notice when the proceeding of interim custody was decided by the other Court.

5) This Court has no hesitation to hold that when interest of public at large needs to be protected by the Court and when it is stolen property it is the duty of the Court that the stolen property which is recovered by police is protected. From the facts and circumstances of the present case it can be said that the stolen property worth at least Rs.7.21 lakh has been recovered by police. When it is a matter of custody of vehicle it is also duty of the Court to see that the vehicle is not kept idle. The finance company wants to sell the vehicle. If the vehicle is not sold immediately, value of the vehicle will further come down and not only the finance company but even the nation suffers loss as it is loss of the property. In view of these circumstances, this Court holds that interim custody

can be given to the petitioner and even permission can be given to the finance company to sell the vehicle subject to condition of giving bank guarantee of any nationalized bank of Rs. 8 lakh. This amount can be recovered from the finance company when at the end, the criminal Court comes to conclusion that this property needs to be confiscated in the interest of the depositors. The bank guarantee should be of such a nature that it is continuing and it covers entire period of the trial. In those terms the proceeding is allowed and the order made by the learned Judge of the Sessions Court is modified.

Sd/-
(T.V. NALAWADE, J.)

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