

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

Criminal Writ Petition No.319 Of 2015.

Shaikh Farooq Shaikh Afzal.
Age : 35 Years., Occ.: Business.
R/o.: Kaisar Colony, Aurangabad.

}

Petitioner.

VERSUS

The State of Maharashtra.
Through Incharge Police Station
Silegaon, Taluka – Gangapur,
District – Aurangabad.

}

Respondent.

Appearance =>

Mr. Janardhan Murkute, Advocate for the Petitioner.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 6th August, 2015.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. With consent of learned counsel for the parties, Writ Petition is taken up for final hearing.

[2] Heard Mr. Janardhan Murkute, learned counsel for the Petitioner and Mr. V.H. Dighe, learned Additional Public Prosecutor for the State of Maharashtra.

[3] Ashok Ranganath Barde, Police-Head-Constable, B.No.26, Local Crime Branch (Rural), Aurangabad has filed complaint with Police Station stating therein that on 7th May, 2014 he alongwith other police personnel were on patrolling duty on Aurangabad to Devgaon road. That time, they received secret information that one vehicle proceeding from Aurangabad towards Devgaon is carrying scrap material of which the ownership is in question. Said vehicle was bearing registration No. MH/20/CT/5344. It was intercepted. Upon its search, it was found that said truck was full of scrap material.

[4] Present Petitioner has filed an Application under Section 457 of the Code of Criminal Procedure before the learned Judicial Magistrate, First Class, Gangapur, District – Aurangabad. Present Petitioner claims possession over the seized articles. His contention was that said articles belongs to him. The learned Magistrate vide his order dated 2nd July, 2014 rejected Criminal M.A.No.332/2014.

Feeling aggrieved thereby, Criminal Revision Application No.17 Of 2014 was filed before the learned Sessions Judge, Vaijapur, District – Aurangabad. The learned Additional Sessions Judge, Vaijapur, District Aurangabad vide his Judgment and Order dated 30th October, 2014 dismissed the said Criminal Revision Application.

[5] The said two orders are assailed before this court, by filing present Writ Petition.

[6] According to Mr. Murkute, learned counsel, the Petitioner is the owner of scrap material, which was seized by the police officials, while intercepting the truck-bearing registration No.MH/20/CT/5344.

He further submitted that, motor vehicle is already given in possession of present Petitioner on he executing "Supurtginama". Mr. Janardhan Murkute, learned counsel invited attention of this court to certain cash memos, in order to substantiate his claim to prove the ownership over the scrap seized.

[7] I have gone through the said cash memos. Cash Memo dated 30/04/2014 is given in favour of one Good Luck Metals, Kishar Colony, Saha Bazar, Plot No.3, Aurangabad of which the present Petitioner is the owner. This cash memo is issued in favour of Gudluk Metals by Goodluck Bhandi Centre & Metals, Rahemaniya Colony, Kiradpura, Aurangabad.

It is not case of the present Petitioner that after purchase of these particular articles, he sold these articles to any third person and, therefore, scrap was transported. From the cash memos, it is clear that, transaction took place within Aurangabad city, however, truck is intercepted on Aurangabad to Devgaon road.

[8] When it is not case of the Petitioner that he has sold the purchased scrap to third trader, situated outside the Aurangabad city, authenticity of these cash memos comes under the cloud.

[9] Both the learned courts below have rightly observed that only on the basis of such cash memos, ownership of scrap cannot be said to be established. Order passed by the revisional court is just and proper, warranting no interference in the extra ordinary writ jurisdiction of this court. Hence, the order :-

ORDER

- (i) Writ Petition is rejected.
- (ii) Rule is discharged.
- (iii) With this Writ Petition is rejected and same is disposed of accordingly.

(V.M. DESHPANDE, J.)