

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 416 OF 2013

RAMESH KISAN BHITE

V/S

THE STATE OF MAHARASHTRA AND ANR.

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Mr. S.S.Bora, Advocate for the Petitioner.

Mr. V.D.Godbharle, A.P.P. for R – 1 State.

Mr. A.N.Nagargoje, Advocate for R – 2.

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CORAM : V.M.DESHPANDE, J.

DATE : 4TH FEBRUARY, 2015

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PER COURT :

1. The present petitioner, who objected the application filed by respondent No. 2 before the learned Magistrate u/s 457 of the Code of Criminal Procedure for return of the motor vehicle Scorpio of Mahindra Company having registration No. MH-16 AB-340 in Crime No. 325/2012 and was unsuccessful in his objection before the learned Magistrate and was also unsuccessful before the learned Sessions Judge in Revision, therefore, is before this Court.

2. The present petitioner is a first informant. On his report, Police Station Officer, Rahuri registered offences u/ss 420, 504, 506 of the Indian Penal Code vide Crime No. 325/2012 against Bharat Lavande, Anil Darekar and some of the police officials. It is alleged by the present petitioner in the First Information Report [hereinafter referred as 'F.I.R.' for brevity] that on 01/08/2011, 'Kararnama' was executed in his favour by accused Anil Darekar and in pursuance to the said 'Kararnama', the vehicle in question was handed over to him and at that time he has paid ₹ 1,70,000/- [Rupees One Lakh Seventy Thousand only] to Anil Darekar and he agreed to pay the instalments to the Financer. According to the F.I.R., the Jeep was forcibly taken into possession by Anil Darekar and Bharat Lavande with the help of some police officials and, therefore, the offences were registered against them.

3. Sachin Butale, respondent No. 2, filed an application u/s 457 of the Code of Criminal Procedure. There is no dispute that with the registration authorities, name of respondent No. 2 is incorporated as 'registered owner' of the vehicle. The contention of Mr. Bora, the learned counsel for the petitioner is that in 2011, there was 'Kararnama' in favour

of the petitioner and the vehicle was placed in his possession in pursuance to the said 'Kararnama', he has paid ₹ 1,70,000/- and he has also paid certain amount to the financier. At this stage, it is not established that the petitioner has paid certain amount to the financier and also there are no receipts filed on record to show that at the time of execution of 'Kararnama', amount of ₹ 1,70,000/- was paid in cash to Anil Darekar.

It is to be noted that even Anil Darekar was not the 'registered owner' but the 'registered owner' was one Bharat Lavande. There is no dispute that presently respondent No. 2 is the 'registered owner' and vehicle was seized by police from his possession.

4. The learned Courts below, in my view, have correctly decided the application u/s 457 of the Code of Criminal Procedure and granted custody of the vehicle in favour of the 'registered owner'. The contention of the learned counsel for the petitioner that the present petitioner is having better right than respondent No. 2, has to be rejected for the simple reason that the petitioner is pressing his claim on the basis of 'Kararnama' only, whereas respondent No. 2 is a 'registered owner' and especially when, at this stage, the

petitioner is unable to point out that substantial amount is parted by him.

5. Further, presently, the learned trial Court has not decided the question of ownership. Only temporary custody is given to the 'registered owner' in order to save the vehicle from becoming junk.

6. In that view of the matter, there is no merit in Writ Petition and accordingly it is dismissed.

[V.M.DESHPANDE, J.]

KNP/Cr. W.P. 416.2013