

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

CRIMINAL APPLICATION NO.4714 OF 2014.

H.D.F.C.Bank Ltd.,
Branch at Nanded,
through its Legal Manager,
Mr.Sunil S/o Prabhakar
Kumthekar, Age 33 years,
Occ.Service, R/o H.D.F.C.
Bank, Nirala Bazar,
Aurangabad. ... Applicant.

Versus

The State of Maharashtra
and another. ... Respondents.

...

Mr.M.V.Ghatge, advocate for the applicant.
Mr.A.S.Shinde, A.P.P for the State.
Mr.H.S.Bedi, advocate for Respondent No.2.

...

**CORAM : S.V.GANGAPURWALA AND
V.K.JADHAV, JJ.**

Date : 19.11.2015.

PER COURT :

1. The present Respondent No.2 has filed
complaint U/s 379 of the I.P.C. Alleging that his

JCB machine has been stolen. According to the present applicant, the applicant has repossessed JCB machine. The present applicant filed application bearing Misc. Application No.324/2014 purportedly U/s 457 of the Cr.P.C for return of the said machine. The J.M.F.C., allowed the said application and directed the Police Station to return the said JCB machine which is seized as per the seizure panchanama to the present applicant on applicant executing indemnity bond of Rs.40,00,000/- (Rupees forty lacs). However, vide the said order the present applicant is restrained from selling the said machine or from changing the nature of the said machine. The applicant filed Revision before the Sessions Judge, bearing Criminal Revision No.6/2014. The said Revision is also rejected on the count that order to sell can only be passed U/s 452 of the Cr.P.C after the trial comes to an end. The petitioner has obtained award from the Arbitrator.

2. The applicant vide the present application seeks permission to sell the said JCB

machine. Mr.Ghatge, learned counsel for the applicant submits that the applicant has advanced loan to the present Respondent No.2. Even award has been passed by the Arbitrator in its favour. Under the contract, the applicant has right to repossess the said vehicle and to sell it. However, as the said machine is now a property involved in a Criminal case, the application is filed seeking permission for sale of the property. According to the learned counsel, this Court can allow sale of the said machine. The value of the said machine will depreciate every passing day. The condition of the vehicle/machine would also deteriorate day by day and in such circumstances, this Court can order sale of the said property. The learned counsel relies on the judgment of the Apex Court in a case of **"General Insurance Company and others Vs. State of Andhra Pradesh and others"** reported in Writ Petition No.14/2008.

3. Mr.Bedi, learned counsel for Respondent No.2 submits that the property in question is a subject matter of a Criminal case. The same can

not be allowed to be disposed of. If the said property is disposed of, the said property will not be available for giving it to the present Respondent who is complainant.

4. We have considered the submissions.

5. It is not disputed by the Respondent No.2 that Arbitrator has passed the award with regard to the liability of the Respondent No.2. We had asked the learned counsel for Respondent NO.2 as to whether the Respondent No.2 has assailed the award passed by the Arbitrator. The learned counsel for the Respondent No.2 fairly submits that the said award passed by the Arbitrator is not assailed.

6. It appears that the present applicant has advanced sum to present Respondent No.2. It is also a matter of record that complaint U/s 379 of the I.P.C. Is pending before the Court. Even till today Charge-sheet is not filed. It would take much time to decide the said proceedings. It would be in nobody's interest if the said machine

is kept idle, it will deteriorate by every passing day and the value of the said machine will be depreciated. The award is also in favour of the Arbitrator for recovery of Rs.23,62,392/- (Rupees twenty three lacs sixty two thousand three hundred ninety two) as contended by the applicant that is the amount at the time when the award was passed and the interest would be mounting every day.

7. Be that as it may, in the present application, we are only concerned with the prayer regarding permission to sell the property. The vehicle involved would not remain its worth after a particular period, if it is kept idle. It will be in nobody's interest to keep the vehicle idle. After some years the said machine/vehicle would not receive the price which it would receive today and the amount of interest on the loan would go on mounting. In fact, it is the Respondent No.2 would be at loss. The identity of the vehicle would not be a matter of dispute. If the said vehicle is hypothecated with the applicant, the applicant under the provisions of

the Contract Act, more particularly, U/ss. 171 to 176 of the Contract Act, have right to repossess hypothecated property and also sell it. As the matter is involved in Criminal case, some directions can be issued to safeguard the interest of the parties. The Apex Court in a case of **"General Insurance Council and others Vs. State of Andhra Pradesh and others"** referred supra has observed that the said seized property can be disposed of by taking proper precaution. The Apex Court has observed that :

"15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it

is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned District."

8. In light of the above, we pass the following order :

(a) The applicant is permitted to sell machinery bearing Engine No.NL A719, and Chassis Number No.NL A719, seized in FIR No.60/2014 registered with Vimantal Police Station, Taluka and District Nanded. The said sale shall be conducted by the petitioner by public auction. The present Respondent No.2 is also entitled to bring the purchaser. The petitioner shall sell the said machine to the highest purchaser. The applicant shall submit an undertaking stating that it would remit the proceeds from the sale/auction of the said machine conducted by it to Respondent No.2 in the event the Magistrate adjudicates the matter and directs so. The amount received from the sale of the said machine shall be kept by the applicant in a separate account. The parties are entitled to put forth their respective stand in respect of the said amount and its entitlement according to the provisions of law at the time of final disposal of the complaint.

(b) The Criminal Application is disposed of.

(V.K.JADHAV, J.)

(S.V.GANGAPURWALA, J.)

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