

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 67 OF 2015

Mrs. Netra Pramod Lavahe. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. G.N. Salunke a/w. Mr. Umesh Kurund, advocate for petitioner.

Mr. Sandeep Dere, advocate for respondent No. 2.

Mr. A.S. Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : SEPTEMBER 2, 2015

P.C.:

1 Heard the learned Counsel for the petitioner, learned Counsel for the respondent No. 2 and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be the original complainant in Crime No. I-17/2013 registered against the respondent for offence punishable under Section 498A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code. The Petitioner happens to be the wife of the respondent No. 2. The respondent No. 2 herein happens to be the registered owner of motor cycle bearing Registration No. MH 05 BK 1820. It is submitted that the respondent No. 2 herein is being prosecuted for offence punishable under Section 498A of the Indian Penal Code. That he had made demands for dowry. In the course of investigation, the motor cycle was seized by the police. The respondent No. 2 had filed an application before the learned Judicial Magistrate First Class, Ulhasnagar seeking return of the property on the ground that he happens to be the registered owner of the said vehicle. The application was filed on 8/4/2013. The complainant had appeared before the learned Magistrate in the said proceedings and had contended that the motor cycle should not be returned to the respondent No. 2, since it is a sort of dowry demanded by the accused in C.R. No. 17 of 2013 registered at Badlapur (East) Police

Station. It was also contended that the motor cycle was purchased by the brother of the complainant i.e. Mr. Rajesh Tayade by paying an amount of Rs. 74,657/-. That the accused had insisted upon the brother of the complainant to register the motor cycle in his name as it had been purchased for the accused. The learned Magistrate by an order dated 28th August, 2013 had rejected the said application seeking return of the property on the ground that the consideration towards the motor cycle was made by the brother of informant.

4 Being aggrieved by the said order, the respondent No. 2 had filed Revision Application before the Sessions Court. The Sessions Court had considered the facts of the case as well as the law of return of property. The Revisional Court has rightly considered that the Petitioner therein i.e. the present respondent no. 2 happens to be the registered owner of the said vehicle and the registration certificate stands in his name. The learned Sessions Court had relied upon the two receipts standing in the name of the respondent No. 2.

5 The revision was objected by the complainant. It was contended by the Petitioner that the motor cycle was recovered by the police. That the learned Sessions Court has rightly relied upon the documents placed before the Court i.e. R.C. Book of motor cycle No. MH-05-BK-1820 and the receipts dated 30th April, 2012. The Revisional Court has rightly considered the definition of “Owner” provided under the Motor Vehicle Act, 1988. During the pendency of the Criminal trial for offence punishable under Section 498A of the Indian Penal Code, the Revisional Court has rightly set aside the order passed by the 5th Judicial Magistrate First Class, Ulhasnagar and has allowed the revision application.

6 In the case of **Sunderbhai Ambalal Desai v/s. State of Gujarat reported in (2002) 10 SCC 283**, wherein the Hon'ble Apex Court has laid down the guidelines for deciding the application under Section 451 of the Code of Criminal Procedure, 1973. The Hon'ble Apex Court has specifically observed that -

“the powers under Section 451 Cr. P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused and by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

The Hon'ble Apex Court has further held that -

“in a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

The Hon'ble Apex Court has further observed that -

“it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of application for return of such vehicles.The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared.”

7 In view of the guidelines given by the Hon'ble Apex Court in the case of **Sunderbhai Desai(Cited supra)**, the vehicle was rightly returned to the respondent No. 2. What has to be seen at that stage is that he is the registered owner of the vehicle. It is a disputed question as to who had paid the consideration for the said motor cycle. However, it needs to be considered that according to the Petitioner, the consideration was paid by the brother of the complainant. The motor cycle is not the vehicle, which was used in

the commission of the offence. It cannot be said that it is recovered under Section 27 of the Indian Evidence Act.

8 Taking into consideration all these aspects, the petition being sans merits stands dismissed. Rule is accordingly discharged. The Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)