

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 35 OF 2015

Shri Vijay Bapurao Balip. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Bhaskar J. Sarwade, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 28, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

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

3 The applicant herein is challenging the order passed by the
Additional Sessions Judge, Palghar dated 30/6/2014 thereby

upholding the order passed by the learned Judicial Magistrate First Class, Palghar refusing to return the property under Section 256 of the Code of Criminal Procedure, 1973 dated 28/4/2014.

4 It is the case of the prosecution that Tavera car bearing No. MH 04 FA 5102 owned by the present applicant was seized in Crime No. 15/14 registered at Manor Police Station for offence punishable under Section 395, 407 read with Section 34 of the Indian Penal Code. The applicant happens to be the registered owner of the said car. It appears from the record that the present applicant had given the said Tavera Car on hire basis to the accused. It is a matter of record that the present applicant is not the accused in the Crime No. 15 of 2014. The accused happen to be the brothers of the present applicant. It is the case of the prosecution that the original accused have committed criminal breach of trust and dacoity on 11/2/2014 at about 6.30 p.m. on Mumbai-Ahmedabad highway, wherein they had stolen copper scrap worth Rs. 10,00,000/-. The learned JMFC, Palghar has rejected the application on the ground that the offence is triable by the Court

of Sessions and therefore, the Magistrate has no power to release the property. Hence, the application under Section 47 of the Code of Criminal Procedure, 1973 is rejected.

5 Being aggrieved by the said order the applicant herein filed revision before the Sessions Court at Palghar. Learned Sessions Court has declined to interfere with the order passed by the learned JMFC. According to the learned Sessions Court, the applicant had knowledge that the car is being used for committing criminal offence. The learned Sessions Court has expressed apprehension that the possibility that the applicant would sell the car during the pendency of the trial cannot be ruled out. Hence, this application.

6 The learned Counsel for the applicant has placed reliance in the case of **Sunderbhai Ambalal Desai v/s. State of Gujarat reported in 2002 Supp(3) SCR 39**, 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.”

7 The learned Courts below have erroneously held that the powers under Section 451 of the Cr. P.C. cannot be exercised by the Court. In the case of **Sunderbhai Desai (cited supra)**, the Hon'ble Apex Court has 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.”

8 In view of the guidelines given by the Hon'ble Apex Court in the case of **Sunderbhai Desai**(Cited **supra**), this Court is inclined to

allow the application. The applicant, who happens to be the registered owner of the vehicle, shall give an undertaking that he would execute supertnama at the time of return of the vehicle and further undertake not to create third party interest in the said vehicle during the pendency of the trial.

9 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The order passed by the Additional Sessions Judge, Palghar dated 30/6/2014 thereby upholding the order dated 28/4/2014 passed by the Judicial Magistrate First Class, Palghar is hereby quashed and set aside.
- (iii) The applicant shall approach the police station and give an undertaking that he would execute supartnama at the time of return of the vehicle and further undertake not to create third party interest in the said vehicle during the pendency of the trial.

(iv) On execution of supartnama and verification that the applicant happens to be the registered owner of Tavera Motor Car bearing No. MH 04 FA 5102, the police shall hand over the possession of the said car in favour of the applicant.

(v) The police shall take the photographs of the car before handing over the same to the applicant and place the same in the proceedings.

(vi) The police shall also record the Chassis number of the said Tavera Car and also take photographs of the same and place in the proceedings.

10 The Rule is made absolute in the above terms. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)