

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

CRIMINAL APPLICATION NO. 979 OF 2014

Ms. Rupali Shailendra Dubey

... Applicant.

V/s.

State of Maharashtra & Anr.

... Respondents.

Mr. Swapnil Ambure a/w. Mikhail Dey, Ashwini Sawant,
Advocate for the Applicant.

Mr. Ajay Patil, APP for the State-Respondent No.1.

Mr. Amit A. Jakatdar for Respondent No.2.

CORAM : M.L.TAHALIYANI, J.

DATE : 06 JANUARY, 2015

P.C. :

1 A criminal complaint bearing FIR No. 416 of 2011 was registered against Respondent No. 2 herein - Shailendra S. Dubey and six others for the offences punishable under section 498-A of the IPC and section 3 and 4 of Dowry Prohibition Act. The investigation of the said FIR has been completed and the chargesheet has been filed only against two accused i.e. Respondent No. 2 - Shailendra and his mother. I am informed that the Division Bench of this court has stayed further investigation with regard to some of the accused and therefore, chargesheet has been filed only against the said two accused.

2 This application mainly involves the issue as to who is entitled to possess the Toyoto Fortuner Vehical/Car bearing No. MH-04-ET-1780. The applicant claims that said vehicle /car was given to her by her father as an article of dowry at the time of her marriage with respondent no.2. It is submitted that a cash amount of Rs.51 lakhs was given to respondent no.2 and his family members, which included the cost of the car. It is submitted on behalf of the applicant that the car was purchased few days before the marriage and it was displayed outside the marriage/ reception hall as an article of dowry.

3 Learned counsel appearing for respondent no.2 has stated that respondent no.2 is registered owner of the said car and the car was purchased few days before his marriage by the father of respondent no.2, by paying money from his own bank account and from the bank account of his father.

4 It is contended on behalf the applicant that since the car was purchased from the money given by her father, it becomes a “Streedhan” and therefore, she is entitled to possess the car in question and she is also the owner of the said car. She, therefore, claims possession of the car during the pendency of the trial.

5 At this stage, it may be mentioned here that an application was made by respondent no.2 before the learned Magistrate for grant of custody of the car. The learned Magistrate rejected the application. Learned Magistrate has stated in his order that respondent no.2 could not produce any documents to show as to how could he get the funds to the extent of Rs. 22 lakhs to purchase the car. Though it was claimed before the Magistrate that the car was purchased by the father of respondent no.2, no proof regarding payment of money or the source of the income of his father, was produced before the Magistrate. The Magistrate, therefore, rejected the application.

6 Respondent No.2, therefore, moved the Sessions Court by way of revision application. The Sessions Court took a view that since respondent no.2 is a registered owner of the car, he is entitled to possess the car by virtue of the provisions of section 457 of the Cr.P.C.. As such the present application arises out of the proceedings under section 457 of the Cr.P.C., initiated in the court of learned Magistrate.

7 Obviously, the issue before the court is as to who is entitled to possess the car in question. The order passed under section 457 is purely a temporary order and is subject to the order passed by the trial court under section 452 of the Cr.P.C. at the conclusion of the trial.

8 Learned counsel for the Applicant has brought to my notice the statements of certain witnesses who had been present at the time when money was handed over to the father of respondent no.2 by the father of the applicant. The statements of the parents of the applicant have also been recorded. As such there are at least four witnesses who have stated before the police that the amount of Rs. 51 lakhs was given by the father of the applicant to the father of the respondent no.2. As against this the respondent no.2 has not been able to adduce any material before the court to substantiate his claim that the car was purchased by his father. The bank pass-book of his father's bank account was produced before me and it is seen that an amount of Rs. one lakh or two lakh was withdrawn by the father of the respondent no.2. Once or twice. There was no material before the Magistrate or the Sessions Court to say that the price of the car was paid by the father of respondent no. 2 from his saving account. Even during the course of the hearing of the present application, the learned counsel for respondent no.2 could not produce any document to substantiate the claim of respondent no.2.

9 After having considered the material on record, I am of the prima facie view that the money for purchase of the car was given by the father of the applicant and after few days the said car was purchased in the name of respondent no.2.

There is no material on record to show that respondent no.2 or his father have spent any amount for purchase of the car. The court has also taken note of the fact that the car was decorated and displayed outside the marriage hall on the date of the marriage and reception. This is a normal practice in some communities to display heavy articles of dowry given by father of the bride to the bridegroom. The argument of the learned counsel for respondent no. 2 that the car was displayed because it belonged to respondent no.2, is not acceptable. I had no occasion to see any where in the marriages in India where the bridegroom displayed his own property at the time of the marriage. As already stated, the practice is that the articles given by the father of the bride are normally displayed for showing it to the invitees.

10 For all these reasons, I have come to the conclusion that the Applicant is entitled to possess the car till conclusion of the trial. Hence, I pass following order.

- i) Toyoto Fortuner Car No. MH-04-ET-1780, presently lying in the custody of the Amboli Police Station, shall be returned to the Applicant on execution of personal bond of Rs. 25 lakhs on following conditions :

- a) The Applicant will not part with the possession of the car in any manner.
- b) The Applicant will use the car for herself and will not allow anybody else to drive the car.
- c) The Applicant will not change the description of the car.
- d) The Applicant will produce the car as and when required by the trial court.

11 Criminal Application stands disposed of accordingly.

(JUDGE)

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