

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

CRIMINAL APPLICATION NO. 1209 OF 2014

Shri Mayank Vinay Agarwal ... Applicant.

V/s.

Shri Rajendra Chalbihari Agarwal & Ors. ... Respondents.

Mr. R. S. Tripathi, Advocate for the Applicant.

Mr. Ganesh Gole, Advocate, for Respondent No.1.

Mr. Ajay Patil, APP for the State.

CORAM : M.L.TAHALIYANI,J.

DATE : 23 JANUARY, 2015

P.C. :

1 Heard learned Advocate appearing for the Applicant, learned Advocate appearing for Respondent No.1 and the learned additional public prosecutor for the State.

2 Respondent No.1- Rajendra Chalbihari Agarwal has been charge-sheeted by the Chembur Police Station for the offences punishable under sections 420, 406, 465, 467, 468 and 471 of the Indian Penal Code on a complaint of the applicant - Mayank V.Agarwal.

3 The applicant and respondent No.1 both are relatives. There is a dispute in between them in respect of a Crane. The applicant claimed that he had purchased the Crane

in question from one Rahul G. Kankula and he has paid him Rs.35/- lakhs and he got the Crane registered in his name in the State of Nagaland. Therefore, he is entitled to possess the Crane. The case of Respondent No.1 is that the Crane was purchased by him from said Rahul and he got it registered in the State of Nagaland.

4 I have gone through the statement of Rahul from whom the Crane was purchased. It is clearly stated by Rahul in his statement that he had received Rs. 25/- lakhs in his ICICI Bank account from the Applicant. Rest of the amount of Rs.10/- lakhs was received by him from Respondent No.1. Rs. 5/- lakhs were transferred by RTJS and Rs. 5/- lakhs were paid in cash. Rahul has clearly stated that the Applicant is owner of the Crane and the Crane was registered in his name after the transaction.

5 Learned Advocate Mr. Gole for Respondent No.1 has taken me through various bank statements of respondent no.1 to indicate that the money was paid by respondent no.1 for purchase of the Crane. There are many entries and cross-entries between applicant and respondent No.1 in their bank accounts which are not to be examined at this stage and it is difficult to say as to for what purpose the amounts were transferred through RTJS. What the court is required to examine at this stage is as to who has a better claim for

possession of the Crane in question during the pendency of the trial. It need not be stated here that this court is not going to decide the issue of ownership of the vehicle.

6 After going through the statement of Rahul and after hearing the additional public prosecutor, it is seen that the Crane was purchased by the applicant from Rahul. What is further to be noted here that registration of the document in the name of respondent no. 1 is found to be obtained on the basis of the forged documents. The RTO authorities at Nagaland have cancelled his registration and have given finding that the registration was obtained on the basis of the forged documents. Learned Advocate Mr. Gole has submitted that the order of RTO has been suspended by the High Court of Gauhati by an interim order. It is noted by this court that the interim order was passed on the basis of the concession given by the additional public prosecutor before the Gauhati High Court.

7 The learned Magistrate has extensively dealt with various bank entries in the statements of accounts of the applicant and respondent no.1. In my opinion, it was not necessary for the learned Magistrate to go into such a thorough enquiry. As stated by me earlier, the issue is limited as to who is entitled to possess the vehicle during the pendency of the trial.

8 It is also informed that the applications were made by the applicant and respondent no. 1 before filing of the chargesheet. Therefore, the applications were under section 457 of the Cr.P.C. Scope of the said section is very limited and the learned Magistrate has travelled beyond his jurisdiction to go into the details of the bank entries.

9 The above stated discussion clearly indicates that the applicant is entitled to possess Crane in question. I, therefore, pass the following order :

i. The Criminal Application is allowed in terms of prayer clause (a).

ii. The Crane bearing Serial No. 490128, YOM-190, Mode No. Demag HC 170, bearing Registration No NL-02-K-0309 shall be returned to the Applicant by the Police on execution of a bond of Rs. 60,00,000/- on following conditions :

a) That the Applicant will not part with possession of the Crane in any manner whatsoever without prior permission of the trial court.

- b) The Applicant shall not change description of the Crane in any manner.
- c) The Applicant shall produce the Crane as and when required by the trial court or appellate court.
- iii) Respondent No.1 is directed to surrender the Crane before the Police within a period of eight days.
- iv) Application stands disposed of accordingly.
- v) The trial be expedited. The trial court is directed to conclude the trial within a period of six months from today.

(JUDGE)

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