

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

Criminal Writ Petition No. 132 of 2016

District : Nanded

Devidas s/o. Kishan Pawar,
Age : 38 years,
Occupation : Agriculture & Driver,
R/o. Guntoor Tanda,
Taluka Kandhar,
District Nanded.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Police Station, Kandhar,
Taluka Kandhar,
District Nanded.
2. Shri Shinde,
Agricultural Officer of Dr. Babasaheb
Ambedkar Sugar Factory,
Arvind Nagar, Kesegaon,
Taluka & District Osmanabad.
3. Shri Atkare,
Recovery Officer of Dr. Babasaheb
Ambedkar Sugar Factory,
Arvind Nagar, Kesegaon,
Taluka & District Osmanabad.
4. Nanasaheb Vitthal Garad,
Age : 47 years,
Occupation : Teacher,
R/o. Village Khed,
Taluka & District Osmanabad.
5. Narayan Vitthal Garad,
Age : 40 years,
Occupation : Agriculture,
R/o. Village Khed,
Taluka & District Osmanabad.

.. Respondents.

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Mr. Ganesh A. Gadhe, Advocate, for the petitioner.

Mr. P.N. Kutti, Addl. Public Prosecutor, for respondent no.1.

Mr. S.J. Salunke, Advocate, for respondent nos.2 and 3.

Mr. S.K. Chavan, Advocate, for respondent nos.4 and 5.

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CORAM : Z.A. HAQ, J.

DATE : 22ND NOVEMBER 2016

ORAL ORDER:

Heard Mr. G.A. Gadhe, learned Advocate for the petitioner; Mr. P.N. Kutti, learned Addl. Public Prosecutor for respondent no.1 - State of Maharashtra; Mr. S.J. Salunke, learned Advocate for respondent nos.02 & 03, and Mr. S.K. Chavan, learned Advocate for respondent nos.04 & 05.

02. The petitioner has filed a complaint case against the respondent nos.02 to 05 alleging that they have stolen truck bearing No. MH-40/4323 owned by the petitioner and that the respondent nos.2 to 5 be prosecuted and punished for offences punishable under Sections 380, 384, 326, read with Section 34 of Indian Penal Code.

In the above proceedings, the petitioner filed an application under Section 94 of the Code of Criminal

Procedure, 1973, on which an order was passed on 07th March 2015, directing issuance of search warrant. Pursuant to this order, the truck was seized and produced. The petitioner filed an application (Exhibit No. 18) under Section 457 of the Code of Criminal Procedure, 1973, praying that custody of the truck be given to him.

The respondent nos.02 to 05 also filed an application (Exhibit No.21) praying that the custody of the truck be handed over to them.

The learned Magistrate has decided these applications (Exhibit No.18 and Exhibit No.21) by order dated 09th April 2015. The application (Exhibit No.18) filed by the petitioner came to be rejected and application (Exhibit No.21) filed by the respondent nos.02 to 05 came to be allowed and it was directed that the truck in question be handed over to the Sugar Factory / its authorized Officer on execution of *Supurtnama* for Rs. 5,00,000/-. The learned Magistrate also imposed certain conditions on the Sugar Factory / its authorized Officer.

The petitioner being aggrieved by the order passed by the learned Magistrate allowing application (Exhibit No.21) filed Revision Application which is dismissed by the impugned order.

03. The contention on behalf of the petitioner

is that the respondent nos.02 to 05 have sought custody of the truck on the basis of a forged agreement. It is submitted that the agreement dated 24th June 2013, on which the respondent nos.02 to 05 have relied to justify the custody of the truck in question, was executed in respect of truck bearing No. MH-12/RA-7573 and it was not in respect of truck bearing No. MH-40/4323 which is the subject matter of dispute. It is submitted that the truck bearing No. MH-40/4323 is purchased by the petitioner on 12th November 2014 and as the petitioner was not the owner of this truck before 12th November 2014, there could not have been any agreement in respect of the truck on 24th June 2013. It is argued that the Magistrate and the Sessions Court have not properly appreciated the material on record and the orders passed by them are not sustainable. It is prayed that the petition be allowed and directions be given to hand over the custody of the truck in question to the petitioner.

04. The learned Advocates appearing for respondent nos.02 to 05 have supported the impugned order.

05. The point which is required to be adverted to at this stage, is not whether the petitioner was owner of the truck before 12th November 2014. The petitioner has not placed any material on record to substantiate his claim that he was not in a position to enter into agreement in respect of the truck in

question on 24th June 2013. It is unexplained as to why the petitioner has not filed affidavit of the earlier owner on record to the effect that the truck in question was not in the custody of the present petitioner till 12th November 2014. As far as the contention of the petitioner about alleged forgery is concerned, it is a matter of trial and the submission can be considered only after the parties lead evidence.

06. This Court passed an order on 23rd August 2016, directing the petitioner to deposit Rs. 1,00,000/- with the Registry of this Court to show his bona fides. The petitioner has expressed his inability to deposit the amount.

07. In the above circumstances, I see no reason to interfere with the orders passed by the subordinate Courts which, in my view, are based on proper appreciation of material on record.

The Writ Petition is dismissed with costs quantified at Rs. 5,000/- [Rupees five thousand] to be paid by the petitioner to the Sugar Factory within one month.

(Z.A. HAQ)
JUDGE

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