

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

CRIMINAL APPLICATION NO. 685 OF 2005

BHIMA ANNA GAIKWAD,
Age. 39 yrs, Occ. Business,
R/o Umbargaon, Tq. Shrirampur,
District Ahmednagar. ...Applicant.

VERSUS

THE STATE OF MAHARASHTRA. ...Respondent.

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APP for Respondents: Mr S P Tiwari

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CORAM : V.K. JADHAV, J.
Dated: November 15, 2016

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ORAL JUDGMENT :-

1. None present for the applicant. Heard the learned
APP for the State.

2. Brief facts, giving rise to the present criminal
application are as follows :-

The applicant is permanent resident of
Umbargaon, Tq. Shrirampur, District Ahmednagar. He
has kept sandalwood in his residential house. On the
basis of certain information PSI of Police Station,
Kopargaon lodged a report on 30.9.2004 against the
present applicant and accordingly crime no.219/2004

came to be registered against the present applicant and one another for having committed an offence punishable under section 379 read with 34 of IPC and 26(F)66, 77, 41(2), 52, 55 of the Indian Forest Act. The applicant filed an application before the Judicial Magistrate First Class, Kopergaon soliciting return of the property as it was purchased and possessed by way of a valid permit. On 12.10.2004 PSI of Police Station, Kopergaon informed Forest Department Kopergaon about said offence and further requested the D.F.O. Ahmednagar to take action under section 61-F of Indian forest Act 1927 to confiscate the said property. The D.F.O. Ahmednagar by his letter dated 23.12.2004 informed to the PSI that since the seized sandalwood was in possession of the petitioner under valid permit, no action under section 61 can be initiated by the Forest Department. On 30.11.2004 investigation was completed and charge sheet also came to be filed. The applicant therefore filed an application before the Judicial Magistrate First Class, Kopergaon under section 451 of Cr.P.C. However, learned Magistrate rejected said application.

3. This Court by order dated 30.6.2005 pending the hearing and final disposal of the application returned seized sandalwood to the applicant on the terms as detailed in the order. It further appears that in terms of the said order the applicant has also furnished bank guarantee to the extent of amount of Rs.2,63,500/- as directed by this Court. It thus appears that during the pendency of this application, seized sandalwood came to be returned to the applicant.

4. It appears from the impugned order that, though the Magistrate has observed that Forest Department has no objection and property may be disposed off as per the order of the court, refused to release the property to the applicant pending the trial. It appears that in terms of registration of the crime no.219/2004, charge sheet came to be submitted before the Court and till this time, case must have been disposed off by the learned Magistrate. By order dated 30.06.2005 Muddemal property is already given in the custody of the present applicant, however, final disposal of the property is subject to the decision of the case pending before the

Magistrate. In view of this, following order would meet the ends of justice.

O R D E R

- I. Criminal Application No.685/2005 stands disposed off in terms of interim order dated 30.6.2005.
- II. The final disposal of the property is subject to the order passed by the Magistrate at the conclusion of Trial.
- III. In case, the Magistrate has concluded the trial without passing any order about the final disposal of the property, then, in the light of the observations made hereinabove, the applicant is at liberty to file an application under the provisions of section 452 of the Criminal Procedure Code before the Magistrate and the learned Magistrate may dispose off the same in accordance with law.
- IV. Criminal Application accordingly disposed off. Rule is made absolute in above terms.

sd/-

(V.K. JADHAV, J.)

aaa/-

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