

(1)

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

CRIMINAL WRIT PETITION NO.290 OF 2016

Shri. Rajendra Vijay Khisty,
Age: 40 years, Occ: Trustee
& Secretary, Evangelical Alliance
Ministries Nashik, Dist. Nashik,
R/o. Tutor Bungalow, Behind Rachana
Vidyalaya, Sharanpur, Nashik,
Dist. Nashik.

..PETITIONER

VERSUS

1. The State of Maharashtra

2. Dilip Shashikumar Naik,
Age: 59 years, Occ: Agri.,
R/o. Nandurbar,
Tq. & Dist. Nandurbar.

..RESPONDENTS

Mr Sandip Shinde with Mr. Santosh Narwade,
Advocates h/f Mr. N.B. Narwade, Advocate for
petitioner;

Mr R. V. Dasalkar, A.P.P. for respondent No.1

Mr Subodh P. Shah, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 22nd August, 2016

ORDER :

From the record, it appears that, the
vehicle bearing registration No. MH-15 CM-1324 is
the subject matter of the Crime No. 44 of 2012 for
an offence punishable under Section 3(1)(x) of the

(2)

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and under Sections 504, 506 of the Indian Penal Code.

2. The above referred vehicle came to be seized on 18th December, 2012 and the present petitioner and respondent No. 2 sought custody of the said vehicle. Both these applications were numbered as Application No. 72 of 2012 and 74 of 2012. Learned Magistrate, pursuant to the powers vested under Section 457 of the Code of Criminal Procedure, passed on 5th January, 2013 directed respondent No.2 to have custody of the property i.e. vehicle till conclusion of the trial on his executing indemnity bond of Rs.11,00,000/- with one or more solvent sureties in the like amount. Respondent No. 2 was directed to take the custody pursuant to the observations made in paragraph-16 of the said order, which reads thus :

"16. In the above peculiar situation, the Chairman of the trust appears to me to be the best person whose custody can be said

(3)

to be the proper custody. However, the Chairman has requested, by filing the notarized affidavit, to hand over the possession of the vehicle to Dilip Shashikumar Naik. There is nothing on the record which may create doubt about the said document. Thus, ultimately I think tha the vehicle needs to be given in the possession of Dilip Shashikumar Naik. For the aforesaid reasons, I pass the following order."

3. Present petitioner then challenged the said order before learned Sessions Judge, Nandurbar, who by his order dated 18th August, 2015 was pleased to dismiss the revision. As such, present writ petition.

4. Perused the scheme of Section 457 of the Code of Criminal Procedure, which reads thus :

"457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate

(4)

under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

5. It appears that, the Magistrate was of the view that possession of the vehicle can be handed over to the Chairman of the trust, as the parties were in agreement with the said proposition as neither the present applicant nor respondent No. 2

(5)

are the recorded trustees.

6. Admittedly, there appears to be dispute in the trust, particularly in the matter of who shall be the lawful trustees to administer trust, apart from their entitlement of the custody of the vehicle.

7. It is to be noted that the Chairman of the trust, who was directed to take possession of the vehicle, has not come forward to do so and has nominated respondent No.2, who from the record could be inferred to have any position in the trust.

8. The person i.e. Chairman of the trust, who was ordered to be entitled to the possession of the vehicle in question under Section 457 of the Code of Criminal Procedure, is not coming forward to take the custody of vehicle but appears to have nominated respondent No. 2, which perhaps appears to be basis for dispute. Since the Chairman is not

(6)

coming forward pursuant to Section 457 of the Code of Criminal Procedure, in my opinion, it will be difficult to ascertain the person who will be entitled for the custody of the vehicle in view of pendency of proceeding under the Bombay Public Trust Act. Respondent No. 2 who pursuant to order of the Magistrate, in my opinion, is not entitled to custody of vehicle in view of Section 457 of the Code of Criminal Procedure.

9. In view thereof, in my opinion, in view of scheme of Section 457 of the Code of Criminal Procedure, it will be appropriate, to keep the vehicle as it is, in the custody of the police, till final decision of the proceedings qua the trustees who shall be in law as per Schedule-I, will be entitled to have custody of the vehicle.

10. With the above observations, the order of learned Magistrate is to be treated as modified to above extent. The writ petition stands disposed of in above terms.

(7)

11. The above observations are prima facie in nature and shall not affect the claim of the parties on merits.

(N.W. SAMBRE, J.)

Tupe