

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 634 OF 2005

Syed Abdul Wajid S/o Syed Abdul Hamid ...Petitioner

Versus

The State of Maharashtra and another ...Respondent

.....
Mr. C.V. Thombre, advocate for the petitioner
Ms. R.P. Gour, A.P.P. for the respondent No.1-State
.....

CORAM : V. K. JADHAV, J.
DATED : 18th AUGUST, 2016

PER COURT:-

1. Learned counsel for the petitioner submits that during pendency of this writ petition, respondent No. 2 Syed Tawakkal Imran Syed Daud, is reported to be dead. At the request of learned counsel for the petitioner, respondent No. 2 be deleted from the array of respondents, at the risk of petitioner.

2. Being aggrieved by common order passed by the 3rd Adhoc Additional Sessions Judge, Nanded dated 31.3.2005 in R.C.C. Nos. 13 of 2005 and 16 of 2005, the original respondent No.2 before the Sessions Court has preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows:-

a) The petitioner had purchased a vehicle Mahindra jeep bearing registration No. MH-26-B-8614 from respondent No.2 for valuable consideration and accordingly possession of vehicle was also delivered to him. Respondent No.2 had filed complaint against the petitioner for having committed offence punishable under Section 392 of I.P.C. in respect of said vehicle. Learned Magistrate has directed police investigation, as provided under Section 156(3) of Cr.P.C. Accordingly, police of Ardhapur police station, registered crime and during the course of investigation, said Mahindra jeep came to be seized by the police. The petitioner claimed custody of the said property by filing Misc. Application No. 274 of 2004 before the Magistrate, whereas respondent No.2 also filed an application bearing Misc. application No. 20 of 2005 claiming custody of the property. Learned trial court by order dated 24.1.2005 rejected the claim of respondent No.2 and allowed the claim of the present petitioner in respect of custody of said Mahindra Jeep.

b) Being aggrieved by the same, respondent No.2 had preferred two criminal revisions, as aforesaid, before the Sessions Court, Nanded. The learned 3rd Adhoc Additional Sessions Judge, Nanded by its impugned order dated 31.3.2005 dismissed both the revision

applications by adding certain conditions and accordingly modified the order passed by the Magistrate. Aggrieved by the same, this writ petition has been filed.

4. Learned counsel for the petitioner submits that the learned Sessions Judge in addition to the Supertnama bond, as directed by the learned Magistrate, further directed the petitioner to furnish solvent sureties of minimum two sureties towards compliance of his bond in case the final decision of the trial goes against him. Further, the learned Judge has directed the petitioner to deposit the amount of Rs.5000/- p.m. towards assumed income derived from the property either in the Court or in the separate bank account. The bank was further directed to accept the receipt of amount only but shall not allow withdrawal from said account and the amount so deposited shall be converted into fixed deposit into same bank. The learned Judge has further stated in para 4 of operative part of the order that failure of the present petitioner to furnish surety or to deposit the payment of amount in the bank, per month, shall entitle other side to apply for recovery of property from the possession of the respondent and he may claim possession on the same terms as applicable to the respondent. The learned Sessions Judge has imposed these two stringent conditions in addition to the Supertnama as directed to be executed by the petitioner. Learned counsel

submits that same is unwarranted and uncalled for. Once Supertnama is executed that would suffice the purpose and there is no need of furnishing solvent surety nor it is necessary to deposit certain amount per month towards assumed income derived from the property.

5. Respondent No.2-original complainant died during pendency of this writ petition. He has not preferred any petition against the order passed by the learned Sessions Judge impugned in this petition.

6. Learned A.P.P. submits that the order passed by learned Additional Sessions Judge is proper, correct, legal and calls no interference in it.

7. It appears from the record that the Magistrate has released the vehicle in favour of present petitioner on executing Supertnama bond for amount of Rs.5,00,000/- with condition to produce the said vehicle as and when required during trial and further shall not dispose of the same till conclusion of criminal case. In view of order passed by the Magistrate, further addition made by learned Sessions Judge are unwarranted and uncalled for. There is no reason directing the petitioner to again furnish solvent sureties in compliance of his bond and further directing him to deposit the amount of

Rs.5000/- p.m. towards payment of income derived from the property either in the Court or in separate bank account. The Magistrate has passed the order on 24.1.2005 whereas the learned Adhoc Additional Sessions Judge, Nanded has disposed of the Revisions on 31.3.2005. By this time, R.C.C. No. 1202 of 2004 must have been disposed of by the Magistrate. Learned Magistrate has passed order on the application filed under Sections 451 and 457 of Cr.P.C. In view of this, if trial is concluded, then there is no question of complying the conditions imposed by the learned Adhoc Additional Sessions Judge, Nanded. Furthermore, the said conditions are unwarranted and uncalled for. In view of the above, I proceed to pass the following order:-

O R D E R

- I. Criminal writ petition is hereby allowed.
- II. The order dated 31.3.2005 passed by the 3rd Adhoc Additional Sessions Judge, Nanded to the extent of imposing conditions directing the present petitioner to furnish minimum two solvent sureties and further to deposit amount of Rs.5000/- per month towards assumed income derived from the property either in the Court or in separate

bank account and the consequences to follow in case the above directions are not complied with, are hereby quashed and set aside.

III. The order passed by the learned Magistrate dated 24.1.2005 below Exh.1 in Misc. Cri. A. No. 20 of 2005 stands confirmed.

IV. Needless to say that if the said R.C.C. No. 1202 of 2004 is disposed of by the Magistrate, then the custody of said vehicle is required to be determined as per the provisions of Section 452 of Cr.P.C.

V. Criminal writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

rlj/