IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 39 OF 2015

Ramnath @ Sameer Verekar, 32 years, H. No. E-132, Near Mahalaxmi Temple, Panaji, Goa.
Presently lodged at Central Jail, Aguada, Sinquerim, Goa. .... Petitioner

Versus

1. State, Through Panaji Police Station, Panaji, Goa.

2. The Public Prosecutor, High Court Building, Altinho, Panaji, Goa. .... Respondents

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Mr. Salil Saudagar, Advocate holding for Ms. Caroline Colasso, Advocate under Legal Aid for the Petitioner.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 21st MARCH, 2016

PRONOUNCED ON:- 30th MARCH, 2016

JUDGMENT:

Rule. Rule made returnable forthwith. Mr. Mahesh Amonkar waives service on behalf of the respondents. Heard finally, by consent of the parties.

2. By this petition, the petitioner is seeking execution of the order dated 21.08.2013 passed by this Court in Criminal Writ Petition No. 90/2013 and the consequent order passed by the learned Sessions Judge on 18.09.2013, directing the return of the motorcycle bearing registration No. GA-07-B-3110 to the petitioner or in the alternative for reimbursement of the value of the said vehicle alongwith compensation.

3. The brief facts are that in June, 2006, the petitioner was arrested for an offence punishable under Section 302 of I.P.C. and during the investigation, a motorcycle bearing no. GA-07-B-3110 belonging to the petitioner was seized from him. The petitioner was put on trial before the learned Sessions Judge in Sessions Case No. 19/2006. It appears that in June, 2009, the petitioner was convicted and sentenced to undergo life imprisonment. Insofar as the aforesaid motorcycle is concerned, it was produced as muddemal alongwith the chargesheet and the learned Sessions Judge directed that the motorcycle be destroyed. Undisputedly, the conviction and the sentence has been confirmed by this Court on 16.09.2011. On 17.10.2012, the application filed by the petitioner for release of the motorcycle was rejected by the learned Sessions Judge.

That, was challenged by the petitioner before this Court in Criminal Writ Petition No. 90/2013, which was allowed by this Court on 21.08.2013, directing the return of the motorcycle. Ultimately, by an order dated 18.09.2013, the learned Sessions Judge directed the release/return of the motorcycle to the petitioner. Accordingly, the petitioner requested the Police Inspector, Panaji Police Station on 20.09.2013 for return of the motorcycle when he was informed that as per the police records the motorcycle was sent to the Court alongwith the chargesheet. The petitioner thereafter approached the learned Sessions Judge for an enquiry as regard the whereabouts of the motorcycle and its return, but in vain. It is in these circumstances that the petitioner has filed the present petition for the aforesaid reliefs.

4. The respondent no. 1 has filed a reply and it is not disputed that the motorcycle is not traceable. The only contention raised is that, the respondent no. 1 had contacted the Insurance Company for assessment of the value of the motorcycle as on 18.09.2013 i.e. the date on which the learned Sessions Judge ultimately directed the release of the motorcycle. According to the Insurance Company, the value

was assessed at Rs.16,036/-.

5. On 03.07.2015, a statement was made on behalf of the respondents that a proposal for award of the compensation in respect of the motorcycle is moved by the Prosecuting Agency. However, thereafter nothing has materialised.

6. I have heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.

7. It is not in dispute that the motorcycle is not traceable as a result of which, the order passed by this Court as well as the learned Sessions Judge for the return/release of the motorcycle cannot be given effect to. The reply filed by respondent no. 1 as also the submissions made on behalf of the respondents, would make it clear that the only dispute is about the valuation of the motorcycle and the consequent reimbursement/compensation to be paid. The submission on behalf of the respondents that the valuation as on 18.09.2013 would be payable to the petitioner, cannot be accepted. In fact when the learned Sessions Judge decided the Sessions Case in

June, 2009, in the ordinary course of things, the order of return of vehicle ought to have been passed. Thus, the petitioner can be said to have been entitled to the return of the vehicle in June, 2009. It is only on account of the fact that the motorcycle was not traceable and prior to that, an order for its destruction was passed that the petitioner was required to approach this Court. The order passed by the learned Sessions Judge on 18.09.2013 is only a consequential order in terms of the direction of this Court. I therefore find that the petitioner would be entitled to the price of the motorcycle as on 02.06.2009, the date on which the sessions case was decided.

8. The next question is about the assessment. The petitioner has produced a copy of the insurance policy of the motorcycle (Annexure-E), which shows that the Insured's Declared Value (IDV) was Rs.46,495/-. The said policy shows the year of manufacture of the vehicle as August, 2005. This policy is from 19.08.2005 to 18.08.2006. It appears that an attempt was made on behalf of the respondents to assess the value from the Insurance Company. A letter dated 20.01.2016 from the New India Assurance Company Limited, Panaji is produced on record, in which the Insurance Company has

informed that in as much as the vehicle was not insured with the said Insurance Company on 18.09.2013, the Company is unable to produce the actual valuation report of said vehicle. However, the Insurance Company has attached the depreciation statement for fixing the IDV of the vehicle. The schedule of depreciation shows that the depreciation is 40%, where the age of the vehicle is between three years to four years. This however would be for the purpose of fixing the IDV. Considering the fact that the year of manufacture is shown to be 2005 in the year 2009 (when the sessions case was decided), the vehicle would be four years old. The depreciation assumed by the Insurance Company for the purpose of IDV and actual depreciation can always vary depending upon the maintenance, use and wear and tear of the vehicle.

9. In the matter of assessment/fixing of compensation, a certain amount of guess work is necessary, if not inevitable. On overall consideration of the matter, I find that it would be appropriate to reckon the depreciation at 30%. So the depreciated value would be Rs.46,495 (value of the vehicle in the year 2005) less Rs.13,949 (30% depreciation) = Rs.32,546.

10. The petitioner was entitled to the return of the vehicle in the year 2009. Thus, the petitioner would be entitled to the value in the year 2009. The petitioner has suffered loss on account of interest. Taking an overall view of the matter, an amount of Rs.40,000/- can be awarded towards price, compensation including interest and costs of the present petition.

11. The petition is filed under Section 482 Cr.P.C. read with Section 452 Cr.P.C. Section 482 of Cr.P.C. provides for saving of inherent powers, which can be exercised to give effect to any order under this Code or otherwise to secure the ends of justice. As noticed earlier, the petitioner is claiming the execution of the order passed by the learned Sessions Judge directing the release/return of the motorcycle. I find that in order to give effect to the order for return/release of the vehicle and otherwise to secure the ends of justice, it is necessary to direct the payment of compensation as aforesaid.

12. In the result, the following order is passed:

(a) The petition is allowed.

(b) The respondents are directed to pay an amount of Rs.40,000/- to the petitioner, within a period of three months from today.

(c) In the event, the amount is not paid as aforesaid, the same shall carry interest at the rate of 7% per annum from the date of this judgment till actual payment.

(d) Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.

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