

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

CRIMINAL WRIT PETITION NO. 941 of 2017

Mrs. Sapana w/o Vipin Sethi,
Age : 40 Years, Occ. : Business,
R/o : N-5 Cannaught Place,
CIDCO, Aurangabad. **... PETITIONER**

VERSUS

- 1] The State of Maharashtra,
Through Inspector, Police Station,
CIDCO, Aurangabad.
- 2] Azim Khan s/o Shakil Khan,
Age : 25 years, Occu.: Student,
R/o : Roop Mahal, Labour Colony,
Aurangabad. **... RESPONDENTS**

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Mr. Ram S. Shinde, Advocate for petitioner.
Mr. A. A. Jagatkar, APP for respondent No.1/State.
Mr. R. M. Shaikh, Advocate for respondent No.2

...

CORAM : PRAKASH D. NAIK, J.

DATE : 24th November, 2017.

ORAL JUDGMENT :-

The petitioner is the original complainant. The first information report dated 1st August, 2016 was registered with Cidco Police Station, Aurangabad for offences punishable under Sections

406, 420 of the Indian Penal Code (for short 'the IPC').

2] In the first information report lodged by the petitioner, it was alleged that the petitioner was acquainted with Smt. Papindar Kaur residing at Sindhi Colony, Aurangabad. In 2016, the petitioner had sold her I-20 Hyundai Car bearing No. MH-20-BN-1903 valued at about Rs. 2,75,000/- to Smt. Papindar Kaur. Towards part consideration, Smt. Papindar Kaur paid the amount of Rs. 25,000/- in cash and the balance amount of Rs. 2,50,000/- was promised to be paid on 27th July, 2016. She did not make the said payment and fraudulently executed agreement with respondent No.2. The possession of the car was with her. However, the petitioner did not sign on the transfer form and the car stands in her name. Hence, it is alleged that the accused deceived her.

3] The petitioner submits that, she is the original owner of the aforesaid vehicle. She had purchased the vehicle by availing loan facility from HDFC Bank and consequently after the purchase, the said vehicle is registered in her name with the concerned R.T.O. authorities at Aurangabad. The loan was obtained from HDFC Bank. The accused in the aforesaid first information report made a payment of Rs. 25,000/- and the balance payment was not made by her, although

the custody of the car was handed over to her on a promise that the balance amount will be paid to the petitioner.

4] During the course of investigation of the aforesaid crime, First Information Report was registered with CIDCO Police Station vide C.R.No. 577 of 2016, the vehicle was seized by the police and the same was parked in the premises of the Police Station CIDCO, Aurangabad.

5] The petitioner preferred an application before the Court of learned Judicial Magistrate, First Class, Aurangabad, for release of the vehicle to her, which was seized by the police during the course of investigation. The said application was preferred on 17th August, 2016.

6] The respondent No. 2 also preferred an application, seeking release of the vehicle in his favour based on the purported agreement dated 1st June, 2016 executed between the petitioner and respondent No.2. According to respondent No. 2, in accordance with the said agreement, the petitioner had agreed to sell the said vehicle to him and on accepting the entire consideration, the vehicle was sold to the respondent No.2. However, the petitioner did not transfer the vehicle in his name. The police seized the vehicle from his custody and accordingly showed that the same was recovered from the custody of

the original accused Smt.Papindar Kaur.

7] The investigating Officer filed say in pursuant to the issuance of notice by the Court. In the say filed by the police on 17th January, 2016, it was stated that the petitioner had lodged the complaint with the police station that she had sold the said vehicle to the accused for consideration of Rs. 2,75,000/- and an amount of Rs. 25,000/- was paid by the accused out of the entire consideration. The police, on conducting enquiry, noticed that the vehicle is in the name of the petitioner/complainant. The car was seized from the accused Smt. Papindar Kaur. The accused has also preferred an application before the High Court challenging the First Information Report, the police therefore, submitted that on condition that the vehicle will be produced before the Court whenever directed by the Court, appropriate order may be passed.

8] The learned Judicial Magistrate First Class vide order dated 20th October, 2016 rejected both the applications. The petitioner and respondent No. 2 challenged the order dated 20th October, 2016 by preferring revision applications before the District and Sessions Judge at Aurangabad. The petitioner preferred Criminal Revision Application No. 255 of 2016 and respondent No. 2 preferred Criminal Revision

Application No. 4 of 2017. Respondent No.2 claimed that the car was sold by the petitioner to respondent No.2 by executing agreement after receiving the entire consideration. Both the Revision Applications were opposed by respective opponents. The contention of respondent No.2 is that he had purchased the car from the petitioner on 1st June 2016 on a Notary bond for a consideration of Rs. 2,10,000/-. After purchasing the said car from petitioner, respondent No.2 became the owner of the said vehicle. The petitioner lodged a false complaint against Smt. Papindar Kaur although the car was not sold to her. The respondent No.2 is the real owner of the car. The possession of the vehicle was taken from respondent No.2. The original accused however, supported the claim of respondent No. 2 and submitted that the vehicle may be released in his favour.

9] The learned Sessions Judge vide order dated 13th June, 2017 dismissed the revision application preferred by the petitioner and allowed the application of respondent No.2. The learned Magistrate was directed to hand over the vehicle to respondent No.2 on certain terms and conditions.

10] The petitioner has, therefore, preferred this petition challenging the order dated 13th June, 2017 passed by the Sessions

Court, rejecting the application preferred by the petitioner as well as allowing the revision petition of respondent No.2.

11] The learned counsel for the petitioner submitted that both the Courts have committed an error in passing the impugned orders. The Courts have over looked the documents on record and passed the orders mechanically. It is submitted that respondent No. 2 has made a false claim that he is the owner of the vehicle. It is submitted that the petitioner is a registered owner of the vehicle. The ownership is supported by valid documents. The petitioner has purchased the vehicle by obtaining the loan from the bank and she has been paying the instalments of the loan. The first information report was registered against Smt. Papindar Kaur on the ground that the vehicle was sold to her and the possession was handed over to her on an understanding that the balance consideration will be paid within stipulated time. That the balance payment was not made by the accused and therefore, the first information report was lodged. Respondent No. 2 was nowhere in the picture and he preferred an application based on false claim. The original accused did not claim the vehicle and unscrupulously supported the claim of respondent No.2. It is submitted that respondent No. 2 and original accused are hand-in-gloves with each other. It is submitted that the vehicle was seized

from the possession of the original accused which supports the complaint of the petitioner.

12] The learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of **Manoj Vs. Shriram T.P. Finance Company Limited** reported in **2003 All.M.R. (Cri) 1757** and another decision of the Supreme Court in the case of **Ashok Kumar Vs. State of Bihar** reported in **J.T. 2000(8) page 54**.

13] The learned counsel for the respondent No.2 submitted that the Sessions Court has passed an order allowing the revision application filed by the respondent No.2 by assigning proper reasons, the case for interfering in the said order is not made out. It is submitted that, respondent No. 2 has purchased the vehicle from the petitioner, which is evident from the document of sale of the said vehicle for consideration. It is submitted that there is no reason to doubt genuineness of the said document as the identity of the petitioner is also established as a person who executed the document. It is further submitted that the Sessions Court has considered the said fact and has allowed the said application. The petitioner has made false claim that the vehicle was sold to the accused in first information report lodged by the petitioner. There is no evidence to show that the

said vehicle was sold to the said accused. It is submitted that, the accused has also supported the claim of respondent No.2. Merely because the petitioner is a registered owner of the vehicle, the same may not be handed over to her. Respondent No. 2 has purchased the said vehicle and he was in possession of the said vehicle. The police have deliberately shown that the vehicle is being recovered from the possession of the accused. It is submitted that after purchasing the car from the petitioner, he became the owner of the said order. He had purchased the vehicle from the petitioner on 1st June, 2016 on a Notary bond for an amount of Rs. 2,10,000/-. It is submitted that the petitioner has not placed on record any document to show that she had made any transaction with the accused. The document executed on 1st June, 2016 purportedly between the petitioner and respondent No. 2 is placed on record in support of the submissions advanced by the learned counsel for the respondent No.2. Respondent No. 2 has also filed reply opposing the relief prayed by the petitioner. It is submitted that, Smt. Papindar Kaur had given no objection for release of the vehicle in favour of respondent No.2. The petitioner is making a false claim that the car was sold to Smt. Papindar Kaur, although the same was sold to respondent No. 2 on 1st June, 2016.

14] The learned counsel for respondent No. 2 placed reliance on

the decisions of this Court in the case of **Virendra Kumar J. Handa Vs. Dilawar Khan** reported in **1991(2) Mh.L.J. 1371** and another decision of this Court in the case of **Jagannath Bapu Shirsat Vs. State of Maharashtra and another** reported in **2000(2) Mh.L.J. 605**.

15] The petitioner is the original complainant in the first information report lodged with the Cidco Police Station on 1st August, 2016 vide C.R. No. 577 of 2016 for an offence punishable under Sections 406 and 420 of the IPC, which was lodged against Smt. Papindar Kaur. The petitioner's case is that the car was sold to the said accused and accepted payment of Rs. 25,000/-. The accused did not make further payment and thereby cheated the petitioner. The car was in the possession of Smt. Papindar Kaur. It is submitted that respondent No. 2 was not concerned with the said proceedings. The petitioner made an application for return of the said car in her favour and at that point of time, respondent No. 2 who was not concerned with the said crime had intervened and preferred an application for return of the property. The claim of respondent No.2 is based on the fact that there was an agreement executed between the petitioner and respondent No. 2 on 1st June, 2016, which purportedly bears the signature of the petitioner alongwith the photographs and that the said document is notarized. On perusal of the said document however, it

appears that the document is not authenticated by any witness although the names of the witnesses are reflected on the said document. It is also pertinent to note that the vehicle was seized from the accused Smt. Papindar Kaur. This fact is evident from the say filed by the police to the application for return of property preferred by the petitioner and respondent No.2. The submission of respondent No.2 that, vehicle was in his possession and the same was recovered from him and that the police have falsely claimed that it is recovered from the accused cannot be accepted. The petitioner is a registered owner of the vehicle. She has purchased the vehicle after obtaining finance from the bank. It appears that she has been paying the instalments in respect of the said loan to the bank. The claim of the petitioner that the vehicle was handed over to the accused on the basis of the transaction executed between them is fortified by the fact that the vehicle was handed over by the accused to the police, which fact is reflected in the say filed by the police. The petitioner is, therefore, the lawful owner of the said vehicle. The documents on record indicate that the car is registered in the name of the petitioner. The learned Magistrate, however, rejected the application preferred by the petitioner on the ground that both the parties are claiming the custody of the vehicle. The Sessions Court has rejected the revision application

of the petitioner by stating that after having received the full consideration of the vehicle and having delivered the possession of the vehicle to respondent No.2, the said transaction becomes complete and, therefore, respondent No.2 is the owner of the said vehicle from 1st June, 2016. It is further observed that the first information report was lodged after a period of two months with an ulterior motive to recover the possession of the vehicle. In the absence of the complaint being made by the petitioner, the document relied upon by respondent No.2 has to be accepted and the question whether the agreement was forged or genuine will be decided after the evidence of both the parties will be recorded by the Trial Court. It may be noted that respondent No.2 is not an accused in the first information report lodged by the petitioner. He had intervened in the proceedings by relying upon the document dated 1st June, 2016. The Sessions Court relied upon the document dated 1st June, 2016 and as observed in the order, the Court examined the signature of the petitioner on the copy of her Pan Card and the signature appearing on the said agreement, which appears to be same. Therefore, the Court formed an opinion that prima-facie it appears that the agreement was executed by the petitioner in favour of respondent No.2. The opinion drawn by the Sessions Court is apparently based on the inferences. Respondent No. 2 has stated that

the vehicle was purchased by payment in cash to the tune of Rs. 2,10,000/-, which is not fortified by any evidence. The accused in the first information report lodged by the petitioner has supported the claim of respondent No.2, which speaks volume of doubt.

16] In the case of **Ashok Kumar Vs. State of Bihar (supra)**, the Supreme Court was pleased to release the property in favour of registered owner of the vehicle. It was observed that it would not be necessary to keep the vehicle in the compound of the Court indefinitely for a long period of time till the final disposal of the case and it is advisable to entrust it to the registered owner of the vehicle on certain conditions. In the case of Narendra Kumar (supra), the Supreme Court has released the motor-cycle to the registered owner on supurtnama bond on certain conditions. It was observed that the vehicle stands in the name of the person in whose favour the Court released the same. The civil proceedings with regard to the ownership of the vehicle were pending in the Court.

17] In the decision relied upon by the respondent No.2 in the case of **Jagannath Shirsat vs. State of Maharashtra and antoher (supra)**, this Court has observed that, *'the general rule with regard to handing over custody of the property to the registered owner is not applicable in*

each and every case and if it is found that the opposite party has better right to possess the property, the general rule can be deviated and the custody of the vehicle can legitimately be delivered to the rival claimant'.

18] The Court has taken into consideration the entire record and it was found that the respondent therein had a better right to possess the vehicle although the said respondent was not the owner of the said vehicle. The Court was pleased to observe that after having completed the sale transaction of the vehicle and having accepted the full consideration of the vehicle, the petitioner therein had delivered a vehicle to the respondent. It was also observed that in accordance with the Sale of Goods Act, the respondent therein is the owner of vehicle in law. It is noteworthy to mention that in the said case, the possession of the vehicle was handed over to the respondent therein after completing the sale transaction. In the present case, according to the investigating machinery, the vehicle was recovered from the accused against whom the petitioner has lodged the first information report and not respondent No.2. It also bears that the accused in the said petition had challenged the first information report before the High Court and the petition challenging the said first information report has been dismissed. In the case of **Virendra Kumar Handa Vs. Dilawar Khan (supra)**, this Court has observed that it is not necessary

that the vehicle should be handed over to the person who is registered owner of the same. In the said decision, it was noted that the learned Magistrate, after sifting the material before him, came to the conclusion that the petitioner therein was entitled to the temporary custody of the vehicle in question. The Court had rejected the argument that the vehicle must be returned to the person in whose name it is registered. Mere fact that the vehicle stands in the name of a particular party is not conclusive proof. If the Magistrate is of opinion, upon appreciation of material on record that the ownership and possession had to be passed to a particular person, then it is open to the Magistrate to direct the vehicle to be handed over to the custody of such a person, notwithstanding that the registration stands in the name of another person. In the present case, respondent No. 2 is relying upon the document in the nature of agreement wherein allegedly the vehicle was sold to respondent No.2. The genuineness of the said document is doubted by the petitioner. Respondent No.2 was not found in possession of the said vehicle and, therefore, there is no strong material to establish the claim of respondent No.2. In the circumstances, the claim of respondent No. 2 ought not to have been considered by the Sessions Court. The order passed by the Sessions Court, therefore, is required to be set aside.

19] In the aforesaid circumstances, I am of the opinion that the custody of the vehicle ought to be given to the petitioner. Hence, I pass the following order :-

O R D E R

- (i) Writ Petition No. 941 of 2017 is allowed.
- (ii) The order dated 20th October, 2016, passed by learned Judicial Magistrate First Class, Aurangabad rejecting Criminal Miscellaneous Application No. 2112 of 2016, as well as the order dated 13th June, 2017 passed by Additional Sessions Judge-6, Aurangabad in Criminal Revision Application No. 255 of 2016 and the order dated 13th June, 2016 passed by the said Court in Criminal Revision Application No. 04 of 2017 are quashed and set aside.
- (iii) The custody of the vehicle Hyundai I-20-Car having registration No. MH-20-BN-1903, Blue in colour, chasis No. MALBB51BR9M124994, Engine No. G4LA9M296674 be handed over to the petitioner herein.
- (iv) The petitioner shall not change the original nature of the vehicle viz. Colour, chasis etc.
- (v) The petitioner shall produce the vehicle before the Trial Court as and when directed.

(vi) The petitioner shall not transfer the vehicle in any manner to third person during the pendency of the Criminal case arising out of C.R. No. 577 of 2016.

(vii) The petitioner shall execute Supartnama bond of Rs. 2,00,000/- (Rupees Two Lac only) in favour of the Trial Court.

(viii) On compliance of the aforesaid conditions, the Car be returned to the petitioner herein.

(ix) If the possession of the car is already handed over to respondent No.2 in pursuant to order dated 13.06.2017 passed by the Additional Sessions Judge-6, Aurangabad, the same be handed over to the petitioner.

(x) Petition stands disposed of accordingly.

(Prakash D. Naik, J.)