

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12302 of 2016

Shri Sanjay Pandit Jadhav and Another. .. Petitioners
Vs
The State of Maharashtra and Others. .. Respondents
—
Shri Shantanu Chandratre for the Petitioners.
Shri Manish Pabale, AGP for the Respondent Nos.1 to 4.
—

CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 1ST FEBRUARY 2017

PC.

1. Heard learned counsel appearing for the Petitioners and the learned AGP for the Respondents. The prayer in this Petition under Article 226 of the Constitution of India is essentially for seeking a writ of mandamus directing the Respondents to release the vehicle more particularly described in the Petition. The said vehicle stands in the name of the first Petitioner. There is a reply filed by Shri Shriram G. Katkade, the Assistant Regional Transport Officer, Regional Transport Office, Thane. In the reply, it is pointed out that the action under Section 207(1) of the Motor Vehicles Act, 1988 read with Section 12(B) of the Maharashtra Motor Vehicles Tax Act, 1958 was taken as the second Petitioner who is the driver of the vehicle failed to produce tax proof, fitness certificate, permit, insurance certificate, registration

certificate, pollution under control certificate and the driving licence.

In Paragraph 5 of the affidavit- in-reply, it is stated thus:

“5. I say that in checking report dated 21/09/2016, at the end of it, the driver and owner of the vehicle was instructed to explain about the irregularities mentioned in the checking report within the period of 7 days. The petitioner produced the valid documents i.e. Tax Proof, Fitness Certificate, Insurance Certificate, Registration Certificate, Pollution under Control Certificate on 23/09/2016 but Motor Driving License of the driver and Permit was not produced by the Owner/Driver of the vehicle. The Respondent No.4 by its letter No.8347 dated 29/09/2016 informed the petitioner to produce all valid documents and get the case settled immediately. A copy of the letter sent to the Petitioner is annexed and marked hereto as Exhibit-1. The Respondent No.4 by its letter No.8566 dated 07/10/2016 again informed the petitioner to present in the office of the respondent, produce the relevant documents, pay the compounding fee for the offences committed and get the vehicle released. A copy of the letter sent to the Petitioner dated 07/10/2016 is annexed and marked hereto as Exhibit-2”.

(underlines supplied)

2. Another factual aspect which is pointed out in the reply is that during the pendency of this Petition, an Application was made by the first Petitioner under Section 457 of the Code of Criminal Procedure, 1973 (for short “CrPC”) before the learned Judicial Magistrate, First Class, praying for release of the same vehicle. The said Application was filed on 27th October 2016. By order dated 7th December 2016, the said Application was rejected by the learned learned Judicial Magistrate, First Class, II Court, Thane.

3. The submission of the learned counsel appearing for the Petitioners is that the original permit which is valid upto 24th November 2016 was submitted to an Officer of the Regional Transport Office. He submitted that the date on which the action was taken in respect of the truck, the Petitioner was not in possession of the permit, but was in possession of the receipt issued by the Regional Transport Office (RTO) regarding the payment of fees of renewal. On instructions, he submits that the original permit is already produced in the office of the Deputy Regional Transport Officer, Thane. As regards the filing of the Application under Section 457 of the CrPC before the learned Judicial Magistrate, First Class, Thane, he submits that a particular Division Bench of this Court orally observed that the remedy of the Petitioners was under Section 457 of the CrPC and therefore, the Application was made before the learned Judicial Magistrate, First Class, Thane.

4. The learned AGP on instructions submits that if the Petitioners produce the original driving license of the driver of the truck and the original permit, the truck will be immediately released. We accept the said statement.

5. We have considered the submissions. Firstly, we must note here that it is not a fair practice to state in open Court as to what was

orally observed by any particular Judge before whom the matter was placed especially when the oral observation does not find place in the order of the Court passed on that day. The order dated 24th October 2016 does not reflect that any opinion was expressed by this Court that the appropriate remedy for the Petitioners is to make an Application under Section 457 of the CrPC. We have perused the Application made before the learned Magistrate by the first Petitioner. The said Application is made on 27th October 2016. In the said Application, it is not disclosed that the present Writ Petition was pending for the same relief. The submission that the Application under Section 457 of the CrPC was made on the basis of the oral opinion expressed by the Bench deserves to be rejected.

6. At this stage, the learned counsel appearing for the Petitioners submits that the order dated 13th December 2016 shows that the fact of the pendency of the Petition was brought to the notice of the learned Magistrate. Firstly, it was an obligation and duty of the first Petitioner to bring to the notice of the learned Magistrate while filing an Application that the present Petition for the same relief was pending in this Court. If the said fact would have been brought to the notice of the learned Magistrate while filing the Application, perhaps, the learned Magistrate would not have entertained the Application. The learned counsel appearing for the Petitioners is relying upon the order dated

13th December 2016 in which it is recorded that the Advocate for the Petitioners pointed out that the Petitioners have already approached this Court and that in the light of the oral directions that the Application was filed. We may note here that at no stage, any attempt was made to amend the Application or to file an affidavit pointing out that the present Petition was pending. According to us, the Petitioners are guilty of suppression of material fact while filing the Application before the learned Magistrate.

7. Now, we turn to the contention that the original permit valid upto 24th November 2016 was produced by the Petitioners. We have quoted the Paragraph 5 of the affidavit filed by Shri S.G. Katkade in which a specific stand has been taken that the driving license of the driver and the permit were not produced by the Owner/Driver of the vehicle. There is a rejoinder filed by the first Petitioner on 27th January 2017. The Paragraph 4 of the rejoinder deals with the Paragraph 5 of the affidavit-in-reply filed by Shri Katkade. In the said rejoinder, it is contended that the original receipt of the permit was produced along with the representation dated 22nd September 2016. It is not even the case made out in Paragraph 4 of the said rejoinder that in fact the Petitioners produced the original permit. It is contended that on the relevant date, the driving licence was not available as it was submitted for renewal with the RTO. Thus, it is not even the stand taken by the

Petitioners in the rejoinder that the permit was produced by the Petitioners. We have perused the representation dated 22nd September 2016 annexed at Exhibit – D to the Petition. On the last page of the said representation, it is stated that even the original permit was produced along with the said representation. Now, in the rejoinder, a stand is taken that the original permit was not produced along with the representation, but the receipt issued for payment of fees was produced. Therefore, the endorsement on the Exhibit-D that the original permit was produced by the Petitioners is factually a wrong endorsement. In the face of the stand taken in the affidavit-in-rejoinder filed by the first Petitioner on 27th January 2017, the oral submission made across the bar that the original permit was handed over to the Officer of the RTO cannot be accepted and the same deserves to be rejected. Admittedly, the original license was not produced by the Petitioners.

8. In the circumstances, we are not inclined to entertain this Petition under Article 226 of the Constitution of India. However, we accept the statement made by the learned AGP on instructions that if the Petitioners produce before the concerned Officer, the original permit and the original driving licence, the truck of the first Petitioner will be forthwith released. Thus, if the first Petitioner produces the original permit and the driving license of the driver for perusal of the concerned Officer of the RTO, the vehicle is bound to be released to the first

Petitioner. Moreover, the Petitioners have a remedy of challenging the order passed by the learned Judicial Magistrate, First Class, Thane, on the Application under Section 457 of the CrPC.

9. Subject to what is observed above, the Petition is rejected.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)