

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4557 OF 2017

Jayesh Shantaram Bhase	 Petitioner
V/s.	
The State of Maharashtra,	
Through Kolad Police Station, Raigad	 Respondent

Mr. Sadhyam Acharya, i/by Mr. Ganesh K. Gole, for the Petitioner.

Ms. N.S. Jain, A.P.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 22ND DECEMBER 2017.

P.C. :

1. Heard Mr. Acharya, learned counsel for the Petitioner, and Ms. Jain, learned A.P.P., for the Respondent-State.

2. By this Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 27th June 2017 passed by the Additional Sessions Judge, Mangaon, District Raigad, thereby dismissing the Criminal Revision Application No.21 of 2017. By the said Criminal Revision Application, the Petitioner herein has challenged the order dated 6th June 2017 passed by the Judicial Magistrate, First Class, Roha, below "Exhibit-1" in Criminal Miscellaneous Application No.79 of 2017. The said application was filed by the Petitioner for return of the property, namely, the Truck, bearing No.MH-04/EB-5001, which was

seized by Kolad Police in C.R. No.19 of 2017 on the count that, it was found to be carrying illegal sand on 5th May 2017.

3. As per the case of the Petitioner, he has purchased the said Truck on 24th March 2017 from its original owner Rehan Riyajuddin Khan. Thereafter, he has also made application to the RTO Authorities for transferring the said Truck in his name. However, in the meanwhile, this C.R. No.19 of 2017 came to be registered and as a result, though the NOC is issued by RTO, Panvel to RTO, Thane, the Truck is yet not transferred in the name of the Petitioner.

4. Perusal of the impugned orders passed by the Trial Court and the Revisional Court show that, the application filed by the Petitioner for return of the Truck came to be rejected mainly on the ground that, in the 'RTO Record', the Petitioner's name is not appearing as 'owner' of the said Truck and it was not seized from his possession.

5. However, learned counsel for the Petitioner, in this Writ Petition, points out that, Driver Pralhad Kundlik Dhakarge, from whose possession the Truck was seized, was made party to the Criminal Miscellaneous Application No.79 of 2017 and, as can be seen from the order passed by the Trial Court, he has given no objection for return of the said Truck to the Petitioner.

6. Further, learned counsel for the Petitioner submits that, now

Petitioner has filed affidavit of original owner Rehan Riyazuddin Khan and in the said affidavit, the Deponent has categorically and unequivocally stated that, he has sold the said Truck to the present Petitioner on 24th March 2017 for a consideration of Rs.6,30,000/- only. Rehan Riyazuddin Khan, the Deponent, has also given his no objection for return of the said Truck to the Petitioner.

7. The learned A.P.P., on instructions from the Investigating Officer, submits that the contents of the said affidavit are verified and found the same to be correct.

8. The offence in the case has taken place on 5th May 2017 and now it is December 2017, therefore, more than six months have lapsed. Investigation is also mostly completed. In such situation, there is no point in allowing the Truck to remain idle and get damaged.

9. Therefore, the Writ Petition is allowed. The Trial Court is directed to return the Truck to the Petitioner, subject to execution of the Indemnity Bond to the satisfaction of the Trial Court and also further subject to condition that, the Petitioner himself will not misuse the said Truck or allow it to be used for illegal transportation of the sand.

10. The Writ Petition is disposed of in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]