

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2612 OF 2018

Prakash Bhanudas Kadam, Age 40 years, R/o.Kadamwadi, Tal.Malshiras, Dist.Solapur.	Petitioner
versus	
The State of Maharashtra	Respondent

Mr.Prabhakar M. Jadhav for petitioner.
Mrs.N.S.Jain, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th July 2018

PC :

1. This is an application for return of property. The petitioner is the registered owner of J.C.B. machine of L.M.V.company bearing registration No.MH-16-AM-0464, of which Chasis number is 1725102 and engine number is 4H2295/1122987, which was seized by Natepute Police Station in Crime No.107 of 2018 registered with the said police station for offences punishable under Sections 379, 353 r/w Section 34 of Indian Penal Code.

2. The prosecution case is that the accused in the said case were involved in illegal excavation of sand and on receipt of the said information the police proceeded to the place of offence. The aforesaid JCB machine was found parked near the scene of offence. It is inferred that the JCB machine was used in excavating the sand illegally. Hence, the FIR was registered with the said police station on 17th April 2018.

3. The petitioner preferred an application before the Court of learned Magistrate, at Malshiras for return of the said JCB machine. The application was opposed by prosecution by filing say. The Trial Court vide order dated 18th May 2018 rejected the said application. Thereafter the petitioner preferred Criminal Revision Application No.23 of 2018 before the Sessions Court seeking the same relief. The said revision application was rejected by order dated 2nd June 2018.

4. Learned advocate for applicant submits that the orders passed by the Courts below are required to be set aside. It is submitted that the charge sheet is yet to be filed and it would take time to conclude the trial. It is submitted that the learned Sessions Judge while rejecting the revision application for return of the property, has referred two cases being registered against the petitioner. The Court has made reference to CR No.6 of 2014 registered with the same police station u/s 379 of Indian Penal Code and under Sections 9 and 12 of Environmental (Protection) Act. Learned counsel for petitioner submits that the said CR is not registered against the petitioner. He pointed out the copy of FIR in relation to CR No.6 of 2014 registered with Natepute Police Station, which appears to have been registered u/s 279 and 427 of Indian Penal Code and under Section 184 of Motor Vehicles Act. It is further submitted that other case referred to by the learned Sessions Judge qua CR No.106 of 2004 relates to offence u/s 379 of Indian Penal Code. It is submitted that no vehicle was seized in that case and the said case is pending in the respective Court for trial. It is further submitted, on instructions, that the applicant would file an undertaking before the Trial Court that the

JCB machine, if returned to him, will not be used in commission of any offence. He also undertakes to produce the JCB machine in question as and when directed by the Trial Court.

5. Learned APP opposed the grant of reliefs prayed in this petition. It is submitted that the JCB machine in question was used in committing the serious crime. The machine was found nearby the scene of offence wherein illegal excavation of sand was undertaken. It is submitted that if the JCB machine is returned to the petitioner, there is likelihood that the same will be used for committing similar offence in future. It is also submitted that while rejecting the application of petitioner, the Sessions Court has observed that the Tahsildar, Malshiras, District Solapur had directed the petitioner to deposit the amount of royalty along with fine vide order dated 8th May 2018. However, the said order is not complied. In such circumstances, the petitioner is not entitled for return of the JCB machine.

6. Having perused the FIR and the orders passed by the Courts below, it is apparent that the FIR was registered on 17th April 2018. The JCB machine was found at the scene of offence. It was inferred that since the machine was parked near the scene of offence where the sand was collected illegally, the accused had used the said machine in commission of said offence. It is also noted that no purpose would be served by keeping the JCB machine at the police station. The trial may not be concluded within a short span of time. The petitioner is willing to give an undertaking, as stated hereinabove. CR No.6 of 2014 which is referred to in the impugned order, relates to another offence and it is submitted that the

petitioner is not concerned with the said offence. It is also noted that the case in relation to CR No.106 of 2004 is pending in the Court since long and no JCB machine was seized in the said crime.

7. One of the reason assigned by the learned Sessions Judge while rejecting the revision application of the petitioner is that the Tahsildar, Malshiras had passed an order directing the petitioner to deposit the amount of royalty, which order is not yet complied by the petitioner. The proceedings before the Tahsildar are independent. Taking into consideration the aforesaid circumstances, I pass following order :

ORDER

- (i) Criminal Writ Petition No.2612 of 2018 is allowed;
- (ii) The JCB machine of LMV company, bearing registration No.MH-16-AM-0464, having chasis number 1725102 and Engine number 4H2295/1122987 seized in CR No.107/2018 registered with Natepute Police Station, be returned to the petitioner on his executing Supurdnama/bond in the sum of Rs.5,00,000/- before the Trial Court;
- (iii) The petitioner shall not sell the JCB machine to any other person and shall file an undertaking before the Trial Court that said JCB machine will not be used in commission of any crime;
- (iv) It is made clear that this Court has not made any observations in relation to the merits of the proceedings initiated by Tahsildar,

Malshiras in respect to the amount of royalty and the same shall be dealt with independently and in accordance with law;

(v) The petitioner shall produce the JCB machine in question as and when required by the Trial Court;

(vi) Petition stands disposed off.

(PRAKASH D. NAIK, J.)

MST