

WRIT PETITION NO.3648 OF 2015

V/s.

Mr. S.G.Kudle for the Petitioner.

Mr. Amit Palkar, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.

DATE : 04th October, 2018

P.C.:

1. The rejection of application preferred by the applicant under Section 457 of the Code of Criminal Procedure by the learned 9th Joint Judicial Magistrate, First Class, Solapur by its Order dated 30.3.2015 below Exhibit-1 in Criminal Misc. Application No.159 of 2015 is under challenge by the present petition.

2. The petitioner is an accused in CR No.112/2014 dated 5.9.2014 registered with Mandrup Police Station, District Solapur for an offence punishable under Section 353 and 395 of the Indian Penal Code.

It is the prosecution case in nut shell that, the accused persons were indulging into illegal excavation of soil/hard rock by use of Chain Pokland JCB

Machine, from the Government land which was within the jurisdiction of Forest Department of Solapur Division. The record further indicates that, the Deputy Conservator of Forest, Solapur Division had on 4.9.2014 seized the said machine under the provisions of Forest Act, 1972 and after lodgment of the said crime handed over the custody of the said machine to the police as recovery in CR No.112/2014 i.e. the present crime. The petitioner is the owner of the said machine. It is alleged that, the said machine was used for illegal excavation of the said soil. After submission of charge sheet the petitioner filed an application No. 159/2015 for return of his property i.e. said machine, which is specifically mentioned in Para No.1 of the impugned Order, annexed at Exhibit-D-Page 30, to the present petition, which has been rejected.

3. The learned APP. submitted that, after effecting the seizure of the said machine, the Forest Department has already confiscated it and therefore, the Trial Court has rightly rejected the application as the learned Magistrate has no jurisdiction under Section 61 of Forest Act to return the same once the provisions of the said Act are applied to the crime.

4. It is to be noted here that, during the investigation of the present

crime the investigating agency i.e. police have seized the said machine by effecting a panchanama. Thus, according to me, the custody of the said machine is now rests with the Police Department which investigated the crime under the provisions of the Code of Criminal Procedure. That, once the crime is registered by the employee of Forest Department with the police and the police seizes the said machine, the Forest Department independently cannot invoke the provisions of Forest Act for confiscation of the said machine de hors to the powers of Investigating Officer which would create anomaly in the process of investigation and would further create hurdle in deciding the application preferred by the accused persons under the provisions of Code of Criminal Procedure. It further appears to me that, once the said machine is seized by the police in investigation of the crime, the Forest Department independently and to their own convenience cannot invoke the powers under the Forest Act, which is detrimental to the interest of owner of the machine and/or to the accused in the crime.

The record clearly indicates that, the applicant is admittedly owner of the said machine and the applicant has produced documents in support of his ownership. The investigation of the present crime is already completed and

if the said machine is permitted to be kept in custody of the police in the precincts of the police station, it will indubitably get rusted and its condition will get deteriorated. As per the settled principles of law, it would be trite to return the said property to the applicant and the applicant can be directed to produce the said machine at the time of trial without changing its appearance or nature.

5. In view of the above, the impugned Order dated 30.3.12015 passed by the learned Judicial Magistrate First Class, Solapur is hereby quashed and set aside and the Investigating Officer in CR No.112/2014 registered with Mandrup Police Station, District Solapur is hereby directed to hand over possession of the aforestated machine (the description of which is in detailed mentioned at Page 20 Para 2 and Page No.30 Para -1 of the present application, to the petitioner within a period of one week from the date of producing the copy of the present order on the following terms.

a) The petitioner shall furnish a bond of Rs.8,00,000/-before the Trial Court with further Indemnity bond stating that the petitioner will produce the said machine at the time of trial of the present crime and during the intervening period the petitioner shall not change the appearance and nature

of the said machine or shall not sale, create any third party right, title or interest in it.

6) Petition is allowed in the aforesaid terms.

All the concerned to act on a copy of this Order duly authenticated by the registry of this Court.

(A.S.GADKARI, J.)

Ashok
Sadashiv
Nalawade

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signed by
Ashok
Sadashiv
Nalawade
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2018.10.09
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