

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION NO. 4456 OF 2017**

Vinod Vishnu Patil

....Petitioner.

Vs.

The State of Maharashtra

....Respondent.

Mr. Vijay Gharat for the Petitioner.

Mr. S.S. Hulke APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 24th SEPTEMBER, 2018.****P.C.:-**

By the present Petition, the Petitioner has impugned the Judgment and Order dated 9th January 2017, passed by the learned Additional Sessions Judge, Raigad at Alibag in Criminal Revision No. 100 of 2016 thereby, dismissing the said Revision and confirming the Order dated 22nd August 2016, passed by the Judicial Magistrate, First Class, Karjat, District Raigad in Criminal Inquiry Application No. 165 of 2016 arising out of C.R. No. 194 of 2016.

2 Heard Mr. Gharat, the learned counsel for the Petitioner and the learned APP. Perused the record.

3 The record indicates that, the Petitioner is an accused in C.R. No. 194 of 2016 instituted by the State Excise Department, Flying

Squad No.2 Panvel. It is the allegation against the Petitioner that, his four wheeler vehicle namely Hyundai Magna Car having registration No. MH-04, DN-4874 was used for transportation of illegal country liquor. After completion of investigation, the police have submitted the final report in the matter.

4 The Petitioner filed aforesaid Application under Section 457 of the Code of Criminal Procedure for return of the said vehicle with a contention that, the said four wheeler vehicle was valued about Rs.1,28,962/- and as the investigation is completed, it may be handed over to him. The learned Magistrate, by its Order dated 22nd August, 2016, by imposing various conditions directed to return the said vehicle to the Petitioner.

The Petitioner, feeling aggrieved by imposition of condition Nos. 6 and 7, preferred Criminal Revision No.100 of 2016 in the Court of Additional Sessions Court, Alibag, District Raigad which has been dismissed by the impugned Judgment and Order dated 9th January 2017.

5 By imposing condition Nos. 6 and 7 upon the Petitioner, the learned Trial Court has directed the Petitioner to produce the original purchase receipt/other documents of the said vehicle and to

produce the valuation report of the said vehicle by effecting depreciation @ 3% p.a. and thereafter to deposit 50% of the value accrued thereon in the Trial Court and to give a continuous bank guarantee for the balance amount of 50% of the said total value.

6 In paragraph No.2 of the impugned Order dated 22nd August, 2016 passed by the Judicial Magistrate, First Class, Karjat, District Raigad, the learned Magistrate had valued the said vehicle for an amount of Rs.2,50,000/- and has directed the Petitioner to furnish indemnity bond in that behalf.

In view of this Court, once the Magistrate arrived at the conclusion that, the value of the said vehicle is Rs.2,50,000/- on the date of passing of the said Order, there is no further need to again submit a valuation report by applying the criteria of 'depreciation' and to arrive at the market value of the said vehicle.

This Court is of the further view that, the condition No.7 imposed upon the Petitioner, thereby directing to deposit 50% amount of the value of the said vehicle in cash in the Registry of Trial Court and to give bank guarantee of balance 50% amount is a complex condition and the Trial Court ought to have directed and/or imposed condition of either deposit of the entire amount in the Registry of the

Trial Court or to furnish a continuous bank guarantee of the value of R.2,50,000/- in the Court. In view of the above, I am inclined to modify the said condition Nos. 6 and 7, imposed upon the Petitioner by the Trial Court.

Hence the following order-

7 The condition No.6 imposed upon the Petitioner by the Trial Court by its Order dated 22nd August, 2016 is hereby waived and the Petitioner is directed to furnish a continuous bank guarantee for a sum of Rs.2,50,000/- during the pendency of the trial of C.R. No. 194 of 2016 along with an indemnity bond therein with the Trial Court.

Rest of the conditions imposed upon the Petitioner by impugned Order dated 22nd August, 2016 are maintained.

8 In view of the above, the impugned Judgment and Order dated 9th January, 2017 passed by the learned Additional Sessions Judge, Alibag, District Raigad in Criminal Revision No. 100 of 2016 is hereby quashed and set aside.

9 The Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

S S
Mashalkar

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by S S
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