

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1516 OF 2018

Amol S/o Ramhari Waje,
Age 28 years, Occu. Business & Agri.,
R/o Dumbre, Tq. Sinnar,
Dist. Nashik.

... **Petitioner**

Versus

The State of Maharashtra,
Through Police Inspector,
City Police Station, Kopargaon,
Tq. Kopargaon, Dist. Ahmednagar.

... **Respondent**

...

Mr. S.S.Deshmukh, Advocate for Petitioner
Mr. S.P.Sonpawale, APP for Respondent–State

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**CORAM : MANGESH S. PATIL, J.
DATE : 21.01.2019**

ORAL JUDGMENT :-

Heard. Rule. Rule is made returnable forthwith.
With the consent of both the sides, the matter is heard finally.

2. The petitioner is impugning the order passed by the learned Magistrate refusing to return the vehicle seized in Crime No.I-131 of 2018 for the offence

punishable under Section 379 of the IPC and rejection of the revision preferred by him against that order by the learned Additional Sessions Judge by the impugned judgment and order dated 15.10.2018.

3. Shortly stated the facts leading to the filing of this Writ Petition are to the effect that the Executive Magistrate, Kopargaon had in the purported exercise of the powers under the Maharashtra Land Revenue Code and the Mines and Minerals (Development and Regulation) Act, 1957 (herein after referred to as 'Mines and Minerals Act') had seized few vehicles including the one bearing registration No.MH-04-GF-9569. At his request, all these vehicles were parked in the premises of the M.S.R.T.C. Depot at Kopargaon on 30.06.2018. One Narayan Baburao Gaikwad was the watchman on duty at the depot. Next morning, he realized that all these vehicles were stolen. He informed the police and the offence was registered. The vehicle was seized during investigation.

4. The petitioner preferred an application under Section 457 of the Cr.P.C. but it was rejected by the

Magistrate and the order was confirmed by the learned Additional Sessions Judge in Revision by the impugned judgment and order, inter alia on the ground that since the vehicle was a property seized by the Executive Magistrate in exercise of the powers conferred upon him under Section 48(7) and (8) of the Maharashtra Land Revenue Code, 1966 and Section 21 of the Mines and Minerals Act, the Magistrate had no jurisdiction to direct release of the vehicle. Hence this Writ Petition.

5. The learned advocate for the petitioner vehemently submits that the petitioner is the owner of the vehicle. He has purchased it from the original owner Jayant Wasudeo Shetty. A copy of the sale deed is produced on record Exh-A. Though it still continues to stand registered in the name of the vendor, the vendor himself had filed affidavit before the Magistrate admitting about having sold the vehicle to the petitioner and therefore as far as the ownership is concerned there is no dispute.

6. As far as the powers of the Executive Magistrate under the Maharashtra Land Revenue Code and the Mines and Minerals Act are concerned, as of now the

offence registered against the applicant is only in respect of Section 379 of the IPC and the Magistrate does have a power and jurisdiction under Section 457 to pass appropriate order. The decision referred to by the learned Additional Sessions Judge is pertaining to the rights of the Executive Magistrate under the provisions of those Acts which have not been included in the case. Even if the petitioner intends to approach the Executive Magistrate for release of the property, there has to be independently an order passed by the Criminal Court since simultaneously the vehicle has been shown as a property involved in the present crime. The property being a vehicle, it is lying idle and the propriety demands that it may be directed to be released in favour of the petitioner subject to suitable conditions.

7. The learned APP opposes the Writ Petition. He submits that the vehicle has been seized pursuant to the powers conferred upon the Executive Magistrates by those two statutes. When he is seized of the matter and has jurisdiction to take suitable steps pursuant to the provisions contained in those two enactments, no order

affecting his rights could have been passed by the Magistrate under the provisions of the Cr.P.C. He did not commit any illegality. The fact situation was rightly considered by the learned Sessions Judge. No order can be passed which would eventually affect the rights and powers of the Executive Magistrate to proceed under the provisions of those two enactments.

8. It is admitted that the present crime has been registered for the offence punishable under Section 379 of the IPC and the vehicle has been shown as a property in the crime. Apparently the offence does not contain any offence under the Mines and Minerals Act.

9. As far as the title of the petitioner is concerned, a copy of the sale deed Exh-A apparently shows that he has purchased the vehicle from the original owner Jayant Wasudeo Shetty under the sale deed dated 19.06.2018. Though the Certificate of Registration still continues in the name of the vendor, the latter has filed an affidavit admitting to have sold the vehicle to the petitioner. Therefore at this juncture, there cannot be any dispute as far as the title of the petitioner to the

vehicle is concerned.

10. True it is that the Executive Magistrate does have powers under Section 48 of the Maharashtra Land Revenue Code as well as Section 21 of the Mines and Minerals Act inter alia to proceed against the vehicle. However, simultaneously the vehicle is also a property involved in the present crime which is for the offence punishable under Section 379 of the IPC simpliciter. Consequently, by virtue of Section 457 of the Cr.P.C. it is only the Magistrate who could have passed the order regarding interim custody of the vehicle. By no stretch of imagination can such jurisdiction be said to have been ousted, albeit simultaneously, the Executive Magistrate may have his own rights and powers to proceed under the provisions of those two enactments.

11. Being a vehicle it cannot be allowed to remain idle. Therefore, taking into consideration the complexity of the matter, when the Executive Magistrate is simultaneously exercising his rights in respect of the self same vehicle, subject to his such rights a suitable order can be passed in the present crime under Section

457 of the Cr.P.C. directing release of the vehicle in favour of the petitioner subject to suitable conditions.

12. True it is that as laid down by the Division Bench in the case of ***Dhannu Vitthal Phapal Vs. The State of Maharashtra and others ; 2018(5) Bom.C.R. 416***, a Magistrate may not have a jurisdiction and it is only the Executive Magistrate has power to pass appropriate orders under the provisions of those two enactments for release of the property. However the scenario in the matter in hand is altogether different where simultaneously the present crime has been registered for theft of the vehicle while being in the custody of the Executive Magistrate.

13. The learned Magistrate as well as the learned Additional Sessions Judge have failed to appreciate these facts and circumstances and have illegally rejected the application. The orders need to be quashed and set aside.

14. (i) The Writ Petition is allowed.

(ii) The impugned orders passed by the

Magistrate and the learned Additional Sessions Judge are quashed and set aside.

(iii) The vehicle bearing No.MH-04-GF-9569 be returned to the petitioner subject to his furnishing Personal Recognizance for an amount of Rs.5,25,000/- and furnishing a solvent surety in the like amount subject to following conditions :

(a) He shall produce the property as and when directed by the Magistrate during the course of the trial.

(b) The present order shall be without prejudice to the powers of the Executive Magistrate to proceed pursuant to the provisions of Section 48 of Maharashtra Land Revenue Code and the Mines and Minerals Act and the vehicle shall not be returned until he exhausts the power in that regard.

15. The rule is made absolute in the above terms.

(MANGESH S. PATIL, J.)

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vmk/-