

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

CRIMINAL WRIT PETITION NO.841 OF 2019

Parmeshwar s/o Shantaram Dudhe,
Aged:38 years, Occ: Agriculture,
R/o Wajoja, Tq. Sillod,
District Aurangabad.

PETITIONER
(Orig. Applicant)

VERSUS

- 1] The State of Maharashtra,
through the Police Station Officer,
Police Station Sillod (Rural),
District Aurangabad.
- 2] S.S. Auto,
Authorized Dealer of Mahindra & Mahindra
Tractors, Aurangabad, Naka, Sambhaji Chowk,
Sillod, District Aurangabad.
- 3] United India Insurance Company Ltd.,
H.No. 5-5-76, Chhabda Complex, VP Chowk,
New Osmanpura, Aurangabad.
- 4] The Regional Transport Officer,
Aurangabad.

RESPONDENTS

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Advocate for Petitioner : Mr. P. D. Surwase
APP for respondent /State: Mr. P.K. Lakhotiya
Advocate for Respondent No.2 : Mr. A.J. Nagode
Advocate for Respondent No.3 : Mr. S.S. Rathi

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CORAM : MANGESH S. PATIL, J.

Reserved on 21.09.2020

Pronounced on : 23.09.2020

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of all the parties the matter is heard finally at the stage of admission.

2. The petitioner who is alleged to have committed an offence in connection with Crime No.333/2017 registered with Sillod Gramin Police Station for the offence punishable under Section 379 and 109 of the Indian Penal Code and Section 192 of the Motor Vehicles Act, where under a tractor and a trolley was seized, submitted an application under Section 457 of the Code of Criminal Procedure seeking return of the tractor. The learned Magistrate by the impugned order rejected the application. Being aggrieved he preferred a revision under Section 397 before the Sessions Court but by the impugned order even the Revision has been dismissed. Hence this Writ Petition.

3. According to the learned advocate for the petitioner, the petitioner is the owner of the tractor. He has purchased it from respondent No. 2 S.S. Auto which is the authorized dealer, under a Tax Invoice dated 02.12.2016 (Exhibit-B) and Sale Certificate of the even date and received its custody under the Delivery Challan. It was duly insured with the respondent No. 3 insurance company under Insurance Policy (Exhibit C). He would submit that both the courts below have refused to return the tractor primarily on the ground that there is a serious doubt about identity of the tractor. He submits that when admittedly the self same vehicle has

been seized from the custody of the petitioner who has been accused of committing the crime, it was unnecessary for the courts below to have indulged in any further scrutiny as regards the claim of the petitioner for its custody. He would submit that while drawing the Panchnama, no specific Chassis and Engine numbers were noted. When the petitioner is being attributed and tried to be roped in being the owner of the tractor, the State cannot be allowed now to raise any issue on that count. The vehicle is rusting in the premises of the police station. As laid down by the Supreme Court from time to time (**Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Anr; 1977 Crl.L.J. 1141 and Sunderbhai Ambalal Desai Vs. State of Gujarat; AIR 2003 Supreme Court 638**) it would be expedient to return the tractor to the petitioner with whatever stringent conditions.

4. Learned APP referring to the affidavit-in-reply filed by the concerned Investigating Officer strongly opposes the petition. He submits that there is serious doubt about identity of the tractor. Though the petitioner has purportedly purchased a tractor from S.S. Auto, during the seizure panchnama (Exhibit R-2) some different chassis number and engine number were found on the tractor as mentioned therein. The petitioner had already made a similar attempt to claim back tractor by filing criminal Miscellaneous Application No.569/2017 mentioning some different chassis and engine numbers. Therefore that application was rejected on 12.09.2017. The petitioner challenged that order in revision but even the revision was dismissed. He would submit that during that revision the

Sessions Court had called upon the Regional Transport Officer to inspect and verify the vehicle and its engine and chassis numbers. It is submitted that once again the affiant Investigating Officer conducted another panchanama on 30.08.2017 and he found that there was some manipulation. An aluminum strips embossed with engine number and chassis number were found to have been pasted. When those aluminum strips which were loosely pasted were removed, it was found that some different number was embossed on the chassis (NKJB12375) whereas the aluminum strip pasted above it was bearing some different number. Having noticed such manipulation the Investigating Officer added the offence of forgery punishable under Section 465 of the Indian Penal Code.

5. The learned APP would then submit that as per the directions of the Sessions Court Regional Transport Officer submitted his report on 26.12.2018. The RTO noticed that the engine number (NGH4XAE0235) and chassis (MBNSFALBFGNH00068) were embossed subsequently. Learned APP would then submit that the brother of the petitioner had purchased another tractor with chassis number NKGB12375. Thus according to the learned APP the petitioner has indulged in one manipulation after another and is playing with the process of law.

6. He would further point out that the self same vehicle is apparently insured with two different insurance companies and the period under cover overlaps. No person would get a vehicle insured for such overlapping period.

7. The learned APP then submits that the Tax Invoice of the S.S. Auto which has subsequently been arrayed as respondent No.2 is also doubtful in as much as though it is of the year 2016 when no GST was in existence, the Invoice bears such numbers. Thus according to the learned APP there is a serious doubt as to the ownership of the petitioner of the seized tractor and it cannot be returned.

8. The learned APP lastly submits that the Road Transport Authorities have examined the tractor pursuant to the directions of the Sessions Court and submitted a report dated 08.01.2019 giving various reasons for not registering the tractor *inter alia* on the ground that it was not in a roadworthy condition.

9. The respondent No.2 who is the dealer in his affidavit-in-reply specifically stated that he is a dealer of Mahindra and Mahindra Ltd. He sold a tractor bearing Engine No.NGH4XAE0235 and chassis No.MBNSFALBEGNHOOO68 to the petitioner under the Sale Certificate Tax Invoice and Delivery Challan dated 02.12.2016 (Exhibit R-1), of Model No.575DI YUVO.

10. The respondent No.3 insurance company in its affidavit-in-reply has admitted to have insured a tractor in the name of the petitioner under a policy No.2307003118P109551396 of Mahindra and Mahindra 575DI YUVO model.

11. It is necessary to note that in view of the allegations and counter allegations regarding manipulation of the engine number and

chassis number appearing on the tractor, respondent no.3 insurance company was specifically directed to come with a concrete stand as to if it is the same tractor which was insured by the petitioner with it. In response, after undertaking a physical verification through its surveyor Mr. Syed Muzammil it has mentioned in its reply that the engine number and chassis number are not as per the manufacturer's print and therefore it is not in a position to specifically state if it is the very same vehicle which was insured by the petitioner with it.

12. It is indeed a matter having unpleasant history. The vehicle was seized for allegedly carrying stolen sand and was intercepted and seized and admittedly since its seizure it is laying in the premises of the police station concerned. Admittedly, the applicant is being implicated being the owner of the tractor. If such is the state of affairs, in the normal course, there would not have been any difficulty in straight away handing over the vehicle to him subject to usual conditions. It is trite that the Supreme Court time and again has expressed futility in allowing detention of vehicles during the course of the trial. One can fruitfully referred to the decisions in the case of Smt. Basava and Sunderbhai (*supra*).

13. However as can be discerned, the matter has become complicated because of changes in the chassis and engine numbers appearing on the tractor. The panchnama under which the tractor was seized mentions that at the time of such seizure the chassis number was appearing as "0065110367V1DH" and the engine number was appearing as

“CO6014709VIDK013B”. Apparently no photograph of such number as they were appearing on the chassis and engine were taken. The petitioner had applied for release of the tractor earlier to the present attempt by filing Criminal M.A. No.569/2017 but it was rejected since the numbers obviously did not tally. He preferred Criminal Revision No.220/2017. It was dismissed but a direction was given to the RTO to inspect and to register the vehicle. Pursuant to such a direction the Magistrate called upon the RTO concerned to undertake the inspection and to register the tractor since it was not registered till then with the RTO. It is apparent that the RTO thereafter undertook the inspection on 26.12.2018 (page 40) and submitted a report on the same date to the Superintendent of the Civil Court at Sillod. In addition he sent another letter dated 08.01.2019 (page 43). It was mentioned that the tractor was having chassis number and engine number which tally with the original numbers mentioned by the dealer on the Tax Invoice (Exhibit B). However, he also notice that the tractor was not in a road worthy condition and therefore for the reasons mentioned therein he was unable to register it because of various provisions contained in the Motor Vehicles Act and the Rules framed thereunder. It is in the backdrop of such state of affairs that now we are faced with the situation.

14. There can be apparently no dispute that whosoever may be the culprit, the petitioner and his aide, as the prosecution is now alleging or the Investigating Officer and his associates, as the petitioner is now alleging but some one has manipulated the numbers on the engine and the chassis of the

tractor. When and at what point such manipulation was done and who is responsible for it is a matter which certainly will have to be gone into since an additional offence of forgery punishable under Section 465 of the Indian Penal Code has been included by the Investigating Officer.

15. But then simultaneously one cannot lose sight of the fact that even according to the prosecution the petitioner is the owner of the tractor which was seized and it was attached with the trolley. In Criminal Miscellaneous Application No.33/2018 the Magistrate has already released the trolley in his favour. There is an authorized dealer respondent No.2 which has come with a specific stand that he had sold a tractor with the number mentioned in the application to the petitioner. Even the respondent No.3 insurance company admits to have insured a tractor for covering a third party risk with the same engine and chassis number. Pertinently no one else has laid any claim to receive the tractor.

16. If such is the state of affairs, when the prosecution itself is alleging that is the owner of the tractor which has been seized, it can very well be returned to him instead of allowing it to be rusted further in the premises of the police station. Even the prosecutor was unable to reply as to what the prosecution would now do with that tractor if it was not to be returned to the petitioner. It is under such circumstances that without getting swayed away by the allegations and counter allegations about manipulation in respect of the chassis number and the engine number one will have to permit it to be returned to the petitioner, of course subject to

suitable conditions so as to enable him to convert it into road worthy condition so that thereafter it can be duly registered and insured.

17. The Writ Petition is allowed. Impugned orders are quashed and set aside. The tractor seized by the police in connection with the present crime be returned to the petitioner subject to following conditions:

- a) He undertakes to not to use the tractor unless and until it is duly insured and registered under the Motor Vehicles Act.
- b) Not to use it except for agricultural operations.
- c) He executes a personal recognizance to the tune of Rs.5,00,000/- and furnishes a surety in the like amount and produces it before the Magistrate as and when called upon in future.

(MANGESH S. PATIL, J.)