

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 158 OF 2020**

Chandanlal S/o Surajlal Jaiswal,
Age : 56 Years, Occ. Driver,
R/o. Shivajinagar, Hingoli,
District Hingoli.

..PETITIONER

V E R S U S

The State of Maharashtra,
Through Police Inspector,
Police Station, Akhada Balapur,
Tq. Kalamnuri, District Hingoli.

..RESPONDENT

...
Mr. R. J. Nirmal, learned counsel for the petitioner
Ms. R. P. Gour, learned Additional Public Prosecutor
...

**CORAM : SURENDRA P. TAVADE, J.
DATE : 06.09.2021**

JUDGMENT :

Rule. Rule taken up for hearing with consent of both the parties.

2. Petitioner is challenging the order passed by the learned Judicial Magistrate (F.C.) Kalmnuri, on the application filed under Section 457 of the Code of Criminal Procedure in Criminal Misc. Application No. 164 of 2018 registered with Akhada Balapur Police Station. The said order was confirmed in Criminal Misc. Application No. 12 of 2019 by the learned Additional Sessions

Judge, Hingoli dated 26th December, 2019. Both the orders are impugned in this Writ Petition.

3. It is contended that the applicant along with two other persons were prosecuted for the offences punishable under Sections 457, 380(A) read with Section 34 of the Indian Penal Code. It was alleged that the vehicle in question bearing No. MH-29-M-1381 was used in the crime. It is contended that the seized vehicle was owned by Ayodhyaprasad Tiwari who died prior to the alleged crime. His wife Shivkanta agreed to sale the Jeep No. MH-29-M-1381 to present applicant by deed of agreement dated 17.01.2009. On the basis of the said deed, the petitioner came into possession of the vehicle in question. He applied for return of vehicle before the learned Judicial Magistrate, who rejected the application on the ground that applicant/petitioner is not registered owner of the vehicle. The said order was challenged before the learned Additional Sessions Judge, Hingoli by way of Criminal Misc. Application No. 12 of 2019, who also rejected the application on the ground that the petitioner has failed to produce the original power of attorney executed in his favour by Shivkanta. The application was also rejected on the ground that there was delay of 352 days and the said delay was not properly explained.

4. It is contended that the applicant/petitioner was in

possession of the vehicle on the basis of agreement. He was using the said vehicle from the year 2009. The alleged offence was registered on 5th June, 2018. Thereafter, the applicant/petitioner presented application for return of Jeep but it was rejected by the trial Court as well as the first Appellate Court and both Courts have not considered the agreement executed in favour of the applicant/petitioner. It is contended that the vehicle was seized from the possession of the petitioner, therefore, it should have been returned to him. Hence it is prayed by allowing this application, the order of the trial Court as well as first Appellate Court be set-aside.

5. Application is opposes by the learned A.P.P. It is contended that the applicant/ petitioner is not registered owner of the vehicle. The vehicle was involved in the crime. The petitioner has failed to produce the alleged power of attorney executed in his favour by Shivkanta who is widow of original owner Ayodhya Prasad Tiwari. It is also contended that the trial Court has considered the facts of the case in proper perspective and rejected the prayer of the applicant/petitioner. There is no need to interfere with the order of trial Court as well as the order of learned Additional Sessions Judge Hingoli. Hence it is prayed that petition be dismissed with costs.

6. Heard the learned counsel for the petitioner and learned

A.P.P.

7. Admittedly, seized vehicle No. MH-29-M-1381 was owned by Ayodhya Prasad Tiwari. After his demise, his wife Shivkanta executed agreement dated 17th January 2009 and handed over the possession of Jeep in favour of the petitioner. Admittedly, vehicle is not transferred in the name of the petitioner till today. It is contended by the petitioner that wife of Ayodhya Prasad Tiwari has sold the vehicle to him but it appears that since 2009 the vehicle is not transferred in the name of the petitioner. Petitioner had submitted application before the learned Magistrate in the capacity of power of attorney holder of Shivkanta wife of Ayodhya Prasad Tiwari. In addition to the agreement to sell, it was expected from the petitioner to produce the copy of the power of attorney before the Courts but the said power of attorney was not produced by him before the Trial Court as well as the First Appellate Court. The offence was registered on 5.6.2018 against the petitioners and on the same day the vehicle was seized. The petitioner moved the trial Court on 28th July, 2018. The said application came to be rejected on 27th August, 2018. Thereafter, he preferred Criminal Misc. Application bearing No. 12 of 2019 on 17th October, 2019. There was delay of 352 days for preferring an application. The first appellate Court has confirmed the order of the learned

Magistrate on the ground that applicant/ petitioner has failed to produce the power of attorney alleged to have been executed in his favour by Shivkanta. In addition to the said ground the first appellate Court rejected the application on the ground that there is 352 days delay which was not at all explained by the petitioner.

8. It appears that the vehicle in question stands in the name of Ayodhya Prasad Tiwari. Neither wife of Ayodhya Prasad nor the petitioner have tried their level best to get the vehicle transferred in the name of the petitioner, since last 13 years. It appears that the petitioner is relying on the agreement dated 17th January, 2009 whereby he claims title as well as possession of the vehicle in question. But unfortunately he has not taken any step to get vehicle registered in his name with the Regional Transport Officer.

9. The learned counsel for the petitioner submits that vehicle was seized from his possession, therefore, it should have been returned to him. But the said analogy cannot be used in the present case because the vehicle in question stands in the name of Ayodhaprasad Tiwari and his legal heirs have not taken any step to transfer the vehicle in their name. No doubt, the wife of Ayodhya Prasad Tiwarari has executed an agreement in favour of the petitioner but she is not owner of the vehicle

hence the said agreement has no legal sanctity. The petitioner has not taken prompt steps to get the vehicle transferred in his name, therefore, the trial Court as well as the First Appellate Court have rightly rejected the applications of the petitioner.

10. The petitioner is not owner of the vehicle nor he has produced no objection of the legal heirs of the original owner of the vehicle, therefore, applicant/ petitioner is not entitled to claim the possession of the vehicle in question. The petitioner can move before Regional Transport Officer authority for transfer of vehicle in his name then he claim the possession of the vehicle or the legal heirs of Ayodhya Prasad Tiwar can submit application before the trail Court for release of vehicle in their favour but at any count the petitioner is not entitled for the possession of the vehicle, therefore, the trial Court as well as Appellate Court have rightly rejected the application. Hence I do not find any merit in this petition. Hence, I proceed to pass the following order :-

ORDER

The Writ Petition is dismissed.

Rule is discharged.

**(SURENDRA P. TAVADE)
JUDGE**