

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

CRIMINAL WRIT PETITION NO.1510 OF 2020

Shri Milind S/o Kacharoba Waghmare,
Age : 22 years, Occu: Business,
R/o : Sirsam, Taluka Palam,
District Parbhani.

... **PETITIONER**

VERSUS

1]The State of Maharashtra
through Police Inspector,
Palam Police Station, Palam,
Taluka Palam, District Parbhani.

2]Shaikh Lal Shaikh Sarwar
Age 35 years, Occu : Business
R/o Dhangar Takali, Tq.Purnas,
District Parbhani.

... **RESPONDENTS**

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Advocate for Petitioner : Mr. P.D.Bachate
APP for Respondent/State: Mr. V.S.Badakh
Advocate for Respondent No.2 : Mr.Y.B.Bolkar

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CORAM : MANGESH S. PATIL, J.

DATE : 27.01.2021

ORAL JUDGMENT :

Heard both the sides.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. In this petition under Article 227 of the Constitution of India, the petitioner is aggrieved by only a part of the direction/order contained in clause 2(vi) of the operative part of the order in Criminal Miscellaneous

Application No.123/2019 preferred by him under Section 457 of the Code of Criminal Procedure claiming custody of a vehicle bearing Registration No.MH-04-CU-9711 seized in connection with Crime No.203/2019 registered with Palam Police Station,Tq.Palam,Dist.Parbhani for the offences punishable under Sections 353 and 379 of the Indian Penal Code and Section 47(7) (8) of the Maharashtra Land Revenue Code, 1966 (for short, “MLRC”).

4. The offence is registered for allegedly stealing and transporting sand from a riverbed.

5. After soliciting say of the prosecution, the learned Magistrate allowed the application with usual terms and conditions *inter alia* containing following condition in clause 2(vi) :

“2(vi). The present order shall be without prejudice to the powers of Executive Magistrate to proceed pursuant to the provisions of Section 48 of Maharashtra Land Revenue Code and Mines and Mineral Act, and vehicle shall not be returned until he exhaust powers in that regard.”

6. The petitioner is now aggrieved by the rider under lined above, preventing return of the vehicle so long as the Revenue Authorities do not exhaust the powers under Section 48 of the MLRC.

7. The learned advocate for the petitioner submits that when the Magistrate was called upon to pass an order under Section 457 of the Code of Criminal Procedure and though the Revenue Authorities simultaneously have powers under the MLRC under Section 48, preventing operation of the order passed under Section 457 till the Revenue Authorities exhaust the powers under Section 48 of the MLRC is illegal. The Revenue Authorities may exercise their own powers independently, however, a Magistrate cannot restrict his own powers under Section 457 in this manner. The condition being clearly illegal be quashed and set aside.

8. The learned APP opposes the petition. He submits that there is no illegality in putting the condition impugned in the petition. In fact it is a

redundant observation. Even without such observations the Revenue Authorities have their own powers under Section 48 of the MLRC which they can exercise irrespective of the passing of the order by a Magistrate under Section 457 of the Code of Criminal Procedure.

9. I have carefully gone through the order passed by the Magistrate. There cannot be any dispute that the petitioner has been found entitled to get back his vehicle pending trial.

10. The question that needs to be addressed is as to if the Magistrate while exercising the powers under Section 457 of the Code of Criminal Procedure could have imposed the impugned condition. In my considered view, a Magistrate shall not treat the powers conferred upon the Revenue Authorities under the MLRC putting any fetters on his powers exerciseable under Section 457 of the Code of Criminal Procedure. Needless to state the Revenue Authorities may invoke the provision and the powers under the MLRC and pass appropriate orders and take suitable steps for its enforcement. The Magistrate while passing the order under Section 457 shall not carry any impression of there being any impediment in exercising his powers. The law may take its own course. However, putting a condition makes the order contingent upon the exercise or otherwise of the powers by the Revenue Authorities. No such condition therefore can be legally put which would prevent operation of an order passed by a Magistrate under Section 457 of the Code of Criminal Procedure.

11. In view of such state of affairs, the Writ Petition is allowed. The impugned condition is quashed and set aside. The Rule is made absolute.

(MANGESH S. PATIL, J.)

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