

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

CRIMINAL APPLICATION NO.2341 OF 2020

Madhav s/o Sahebrao Shinde
Age 36 years, Occ-Agri. & Business,
R/o Masla, Tq. Gangakhed
Dist.Parbhani.

.. PETITIONER

VERSUS

The State of Maharashtra
Through Gangakhed Police Station,
Gangakhed, Tq. Gangakhed
Dist.Parbhani.

.. RESPONDENT

....

Advocate Shri S.A.Nagarsoge for the applicant.
A.G.P Smt.R.P.Gaur for respondent State.

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CORAM : MANGESH S. PATIL, J.
DATE : 12.01.2021

ORAL JUDGMENT :-

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

2] By way of this proceeding under Section 482 of the Cr.PC. the applicant who is one of the accused from Crime No.490/2020 registered with Gangakhed Police Station, District Parbhani for the offence punishable under Section 379 read with Section 34 of the I.P.C. and under Section 48 of the

Maharashtra Land Revenue Code, submitted an application under Section 457 of the Cr.P.C. before a Magistrate seeking return of the vehicle being truck bearing Registration No.MH-45-1267, Chasis No.MAT448090C3G19311, Engine No.B591803221G6327330 seized by the Investigating Officer during the course of the investigation.

3] The learned Magistrate by the order dated 26/10/2020 allowed the application subject to several conditions. The applicant is aggrieved by the condition Nos.3 and 8 which are being impugned in this proceeding. The condition nos.3 and 8 read thus :

"3] The Investigating Officer through Revenue Authority shall produce the truck before the Deputy Collector on or before 09/11/2020 and on completion of necessary formalities as observed by Hon'ble Bombay High Court in Case of Dhannu Phapal (supra), the vehicle shall be released.

8] The instant order shall be without prejudice to the powers of Collector, Deputy Collector and Executive Magistrate to proceed pursuant to the provision of Section 48 of Maharashtra Land Revenue Code and truck shall not be returned until he exhausts powers in that regard."

4] The learned advocate for the applicant submits that both the conditions are not sustainable and deprive the applicant of the right to claim back the vehicle. He would submit that as far as condition no.3 is concerned, the Magistrate has illegally directed the Investigating Officer to produce the truck before the Deputy Collector on or before 9/11/2020, the condition was unnecessary. Besides, the Investigating Officer has not obeyed this condition till date.

5] So far as condition no.8 is concerned, the learned advocate submits that the rider put in the last words clearly runs counter to the powers of the Magistrate under Section 457 of the Cr.P.C. The revenue authorities may have their own powers but the direction prohibits execution of the order till the revenue officers exhaust the power conferred upon them under Section 48 of the Maharashtra Land Revenue Code. He therefore submits that both the conditions being unwarranted, be quashed and set aside. The learned advocate further points out that this Court in Writ Petition No.7873/2019; Ambadas Manikrao Saudagar V/s The State of Maharashtra and others, by order dated 01/07/2019, while allowing the revenue authorities to act independently had directed release of the vehicle.

6] The learned A.P.P. opposes the application. She submits that both the conditions are legal. Even without imposing such conditions, the revenue authorities have independent powers under Section 48 of the Maharashtra Land Revenue Code to proceed. This is what has been expected by the Magistrate while imposing the conditions. As far as the direction contained in Clause 3, she does not have any instructions as to if the Investigating Officer has obeyed it.

7] True it is that though the offence has been registered and it would take its own course and would reach a logical conclusion and even though the revenue authorities have the powers under Section 48 of the Maharashtra Land Revenue Code which they are entitled to exercise, the last portion of condition no.8 prevents operation of the order passed by the Magistrate under Section 457 of the Cr.P.C. till the revenue authorities exhaust the remedies and

powers under Section 48 of the Maharashtra Land Revenue Code. It clearly undermines the former's jurisdiction and is not sustainable in law.

8] As far as the condition no.3 is concerned, again it only expects the Investigating Officer to produce the vehicle before the revenue authorities. It merely directs him to produce it on 9/11/2020. There is no record to come to a concrete conclusion as to if the Investigating Officer has obeyed this direction. Whatever may be the fact situation, the date has already expired.

9] At this juncture, the learned A.P.P. insists that once the condition no.8 goes, the applicant will not turn up and will not pay the penalty.

10] I am afraid, the submission is fallacious. This order does not restrict the powers of the revenue authorities under Section 48 of the Maharashtra Land Revenue Code. Needless to state that the authorities may exercise those powers independently, however, the impugned condition restricts the powers of the Magistrate under Section 457 of the Cr.P.C. and is not sustainable. The submission cannot be accepted.

11] Considering all the aforementioned facts and circumstances, the Application deserves to be allowed partly.

12] The Application is allowed partly. The challenge to the imposition of condition no.3 is dismissed.

13] The application to the extent of challenge to the condition no.8 is allowed. The order directing that the truck shall not be returned until the

Deputy Collector or the Collector exhausted the powers under Section 48 of the Maharashtra Land Revenue Code, is quashed and set aside. The Rule is made absolute to this extent.

[MANGESH S. PATIL, J.]

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