

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1132 OF 2021

KARAN SOMNATH MOTE	.. PETITIONER
VERSUS	
THE STATE OF MAHARASHTRA	.. RESPONDENT

...
Advocate for Petitioner : Mr. S. S. Kulkarni
APP for Respondent : Mrs. G. L. Deshpande
...

CORAM : N. R. BORKAR, J.

DATE : 27-10-2021

PER COURT :-

The tractor bearing registration No. MH-20-CH-8912 alongwith trolly came to be seized in Crime No. 197 of 2021 registered by Georai Police Station for the offences punishable under Sections 379, 511, 109 of the Indian Penal Code read with Sections 126, 177, 39, 192 and 235(2) of the Motor Vehicles Act, 1988. According to the prosecution, the accused in aforesaid crime were illegally excavating the sand from river Godavari and on seeing the patrolling party ran away from the place of incident leaving the tractor in question and other tractors at the place of incident.

2. The application under Section 457 of the Code of Criminal Procedure, 1973 was made before the learned Judicial Magistrate for release of the tractor in question. The learned

Magistrate allowed the application, however, directed the Investigating Officer to take the tractor in question to the Tahsildar Georai and it be released only after completion of necessary action by the Tahsildar for theft of sand. The order to the extent of rider put by the learned Magistrate that the tractor be released after completion of necessary action by the Tahsildar for theft of sand is impugned in this petition.

3. I have heard learned counsel for the petitioner and learned APP for the respondent – State.

4. Learned counsel for the petitioner submits that the learned Magistrate erred in putting impugned rider. It is further submitted that under Section 48 of the Maharashtra Land Revenue Code, 1966, the vehicle needs to be produced before the Collector. It is submitted that the seizure panchnama prepared by Talathi would show that there was no sand in the trolley attached to the tractor in question. Learned counsel for the petitioner has produced said panchnama on record. It is marked as Exhibit "X", for identification. In support of submissions, learned counsel for the petitioner has relied upon Judgment of this Court in Criminal Writ Petition No. 35 of 2021 (*Pravin s/o. Eknath Solanke Versus The State of Maharashtra*).

5. On the other hand, learned APP for the respondent-State submits that in addition to present crime, earlier also the tractor in question was seized in Crime No. 80 of 2021 for the similar offence. It is submitted that at the time of alleged incident, the tractor in question was found without registration number plate. It is further submitted petitioner is avoiding to receive the notice issued by the Tahsildar. It is submitted that considering these facts and circumstances, the present petition may not be entertained.

6. I have perused the FIR. In all seven tractors including the tractor in question came to be seized from place of incident and all the tractors were without registration number plate. Apart from it, earlier also the tractor in question was seized in similar crime. Learned APP has produced on record the report, which states that the petitioner is avoiding to accept the notice issued by the Tahsildar. Considering the facts and circumstances, I am not inclined to interfere with the impugned rider imposed by the learned Magistrate in the writ jurisdiction. The criminal writ petition is, thus, dismissed.

(N. R. BORKAR)
JUDGE