

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.602 OF 2021

Dr. Reshma Suraj Pawar,
Aged about 48 years,
Occupation : Medical Profession,
R/o. Kolhapur Cancer Centre Pvt. Ltd.,
R.S. No. 238, Opposite Mayur Petrol Pump,
Gokul Shirgaon, Tal. Kolhapur,
Dist. Kolhapur, Pin : 416 234

...Petitioner
(Ori. Applicant)

Versus

1. The State of Maharashtra,
At the instance of Shahupuri Police Station,
Kolhapur, C.R.No. 246/2018
(Notice to be served on the A.P.P.
High Court, Mumbai)

2. Rajendra Bhimrao Nerlekar,
Aged about 43 years,
Occupation : Business,
R/o. Hupari, Tal. Hatkanangale,
District : Kolhapur

3. Shahanoor Akbar Mujawar,
Since deceased through his heir
& legal representatives,
Nusarat Shahanoor Mujawar,
Aged about 39 years,
Occupation : Business,
R/o. "Jainhind Park" Bungalow No.4,
Plot No. 544/1, Kasba Bhawada,
Kolhapur

...Respondents
(No.2 is Orig.Accused No.1)

Mr. Dilip Bodake for the Petitioner

Mr. A. R. Patil, A.P.P for the Respondent No.1–State

None for the Respondent Nos. 2 & 3

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO CONFERENCING)
MONDAY, 23rd AUGUST 2021

ORAL JUDGMENT :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of respondent No.1–State.

3 By this petition, the petitioner seeks quashing and setting aside of the order dated 24th October 2019 passed by the learned Additional Sessions Judge, Kolhapur, below Exhibit 28 in MPID Case No. 1/2018 and further seeks release of her vehicle i.e. Audi A-6 35 TDI Limozin bearing registration No. MH-09-EK-5083 in her favour.

4 On 22nd January 2021, this Court (Coram: A. S. Gadkari, J.) issued notice to the respondent No.2, returnable on 12th February 2021. In addition to Court notice, the petitioner was also directed to serve the respondent No.2 through private notice and to file affidavit of service in the Registry before the next date i.e. 12th February 2021. In the said order dated 22nd January 2021, it is stated that 'as per the cause title, the respondent No. 3 has already died and therefore, the present writ petition against him stands abated'. Thereafter, the matter came up before this Court on 18th June 2021. It appears that the petitioner had served the respondent No. 2 by private notice and had filed an affidavit to that effect, however, as far as Court notice is concerned, the office noting showed that, 'notice issued to respondent No. 2 is not yet received back duly served or unserved.' In view thereof, again fresh notice was issued to respondent no. 2, returnable on 30th June 2021. Hamdast was permitted. It appears from the office noting dated 15th July 2021 that notice issued to respondent No. 2 was duly served. As far as private notice was concerned, an additional affidavit of service was filed by the petitioner's advocate on 19th June 2021 stating that the respondent No. 2 'refused to accept notice'. Despite service, none appeared for the respondent No. 2.

5 When the aforesaid petition came up before this Court, again on 4th August 2021, it was noted in the order that despite notice, none appears for respondent No. 2. Since the aforesaid petition was to be finally decided, notice for final disposal was issued to the respondent No. 2, returnable on 11th August 2021. The advocate for the petitioner was directed to serve the respondent No. 2 by private notice and file affidavit of service. Notice was to indicate that an endeavour shall be made to dispose of the petition finally at the stage of admission, even if none appears for the said respondent. Learned A.P.P also assured to inform the respondent No. 2 through the concerned Officer of the concerned Police Station of the next date and file a report of service. Accordingly, the matter was adjourned to 11th August 2021. On 11th August 2021, office note showed that due to short time, notice could not be served and hence returnable date was extended to 23rd August 2021. Hamdast was permitted. As far as private notice was concerned, an affidavit of service was filed stating that the respondent No. 2 was served. Accordingly, matter was adjourned to 23rd August 2021. Today, when the petition was called out, learned A.P.P informs that the concerned Officer has informed the respondent No. 2 of today's date. Statement accepted. Despite several notices, none appears for respondent No. 2. Hence, petition is taken up for final disposal.

6 Learned counsel for the petitioner submits that the petitioner is the owner of the said vehicle. Learned counsel relied on the documents i.e. the registration certificate, insurance of the vehicle, and other documents, to show the ownership of the vehicle of the petitioner. He further submits that admittedly, the petitioner is not an accused in the case i.e. C.R. No. 246/2018 registered with the Shahupuri Police Station in connection with which the said vehicle was seized by the police. He further submits that the observations of the learned Judge in the impugned order, in particular, para 6 that the petitioner is not the real owner of the muddemal vehicle and that one Shahanoor Mujawar is the owner of the vehicle, is contrary to the documents on record. Learned counsel for the petitioner submits that the petitioner had taken a loan from a Finance Company and had purchased the said vehicle and that till date, the petitioner has been repaying the loan for the said vehicle. Learned counsel for the petitioner submits that the petitioner is ready to produce the original documents i.e. the registration certificate, insurance papers with respect to the said vehicle before the trial Court at the time of release of the vehicle.

7 Learned A.P.P does not dispute the fact that the petitioner is not arraigned as an accused in C.R. No. 246/2018 registered with the Shahupuri

Police Station. He also does not dispute the fact that the petitioner is the owner of the Audi Car and that the documents show the ownership of the petitioner.

8 Perused the papers. On 30th April 2018, an FIR bearing C.R. No. 246/2018 came to be registered with the Shahupuri Police Station, Kolhapur as against one Rajendra Nerlekar i.e. respondent No. 2 and others (not the petitioner) for the offences punishable under Sections 419, 420, 406, 468, 120-B r/w 34 of the Indian Penal Code; Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act; Sections 4 and 5 of the Prize, Chits and Money Circulation Scheme (Banning) Act and Sections 66-A and 66-D of the Information Technology Act. Respondent No. 2-Rajendra Nerlekar (original accused No.1) was arrested on the very same day i.e. on 30th April 2018.

9 During the course of investigation, the police seized the subject Audi Car, as the said car, according to the prosecution was used in the commission of the offence i.e. for collection of monies from various investors. According to the learned A.P.P, on 9th February 2018, the petitioner had entered into an agreement with the accused No. 1-Rajendra

with respect to the said vehicle and that the said vehicle was agreed to be sold for Rs. 49,00,000/-, out of which, the petitioner allegedly received Rs. 25,00,000/- on 10th January 2020, as an advance amount. It is the prosecution case that the said amount of Rs. 25,00,000/- so received by the petitioner from the accused No. 1-Rajendra was from the misappropriated amount received by the accused No. 1-Rajendra and others.

10 It appears that the vehicle was seized from the garage/workshop where the said vehicle was allegedly given by the accused No.1-Rajendra for servicing/repairs. A perusal of the impugned order shows that the learned Judge has observed that the petitioner is not the real owner of the muddemal car and that the real owner was one Shahanoor Mujawar. On the contrary, the documents on record show that the vehicle in question stands in the name of the petitioner till date. Learned A.P.P also does not dispute the same. It also appears that the loan amount is being paid by the petitioner to the Finance Company. The said observation in the impugned order thus appears to be erroneous. Admittedly, the petitioner is not involved in the C.R. lodged as against the accused No.1-Rajendra. The vehicle is lying in the police station since it was seized on 21st August 2018, in an idle condition. In the circumstances, considering the aforesaid, there is no impediment in allowing the petition and in granting interim custody of

the vehicle to the petitioner, pending the final disposal of the trial i.e. C.R. No. 246/2018, on certain terms and conditions.

11 Accordingly, the petition is allowed on the following terms and conditions :

ORDER

(i) The impugned order dated 24th October 2019 passed by the learned Additional Sessions Judge, Kolhapur, below Exhibit 28 in MPID Case No. 1/2018 is quashed and set-aside;

(ii) The vehicle i.e. Audi A-6 35 TDI Limozin bearing registration No. MH-09-EK-5083 be released in favour of the petitioner, as an interim measure, pending the final disposal of the case by the trial Court;

(iii) The petitioner, before release of the vehicle, shall produce the original documents before the trial Court i.e. original RCC, etc. for verification of the same;

(iv) The petitioner, before the release of the vehicle, shall file an undertaking in the trial Court, stating therein that she will not sell or

create any third party rights with respect to the vehicle, till the trial in C.R. No. 246/2018 is over or without the permission of the Court;

(v) The petitioner will also undertake to produce the vehicle, if so necessary, during the trial; and

(vi) The petitioner shall also file an Indemnity Bond in the trial Court, to the satisfaction of the trial Court, before the release of the vehicle.

(vii) The Investigating Officer, before handing over the vehicle to the petitioner, is directed to take photographs of the seized vehicle at the cost of the petitioner, for placing the same on the record of the trial Court.

12 Rule is made absolute in the above terms. Petition is disposed of accordingly.

13 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.