

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

WRIT PETITION NO.3117 OF 2021

Mallinath S/O
Shivanand Zalke

... Petitioner

Vs

The State of Maharashtra
Through its Police
Inspector
South Police Station,
Akkalkot

... Respondents

...

Mr. A.B.Kharosekar with Mr. Omgashad B. Boinwad for
the Petitioner.

Mr. A.R. Patil , APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : SEPTEMBER 30, 2021.
(Through Video Conferencing)

ORAL JUDGMENT :

Rule.

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

3 Petitioner's vehicle bearing registration no.MH-13-CU-5917 was seized during the investigation in the Crime No.171 of 2021 in the offence for the alleged stealing and transporting sand from river bed without permit. Petitioner's application under Section 457 of the Code of Criminal Procedure, 1973 was granted but release of the said vehicle was made subject to outcome of proceedings, initiated by the Revenue Officer under the provisions of the Maharashtra Land Revenue Code, 1966. The relevant condition (B) reads as under:

*B) Police Inspector, South Police Station is hereby ordered that, after due verification of identity of the applicant Mallinath Shivanand Zalake and particulars of vehicle i.e. vehicle registration number, Chassis and Engine number and after getting confirmation; handover interim custody of above said vehicle to the applicant **after the conclusion of the proceeding initiated by the Revenue Officer and subject to result of the proceeding and also on his execution of indemnity bond of Rs.25,00,000/-***

4 Petitioner aggrieved by the rider underlined above, inter-alia postponing the return of vehicle until conclusion of the proceedings under Section 48 of the MLRC, has preferred this Petition.

5 The learned counsel for the petitioner submitted that the powers of a Magistrate exercisable under Section 457 of the Code are well-defined and thus, not subject to outcome of other proceedings initiated either under the MLRC or otherwise in relation to the vehicle of which possession is sought by the petitioner as its owner. In support of this contention, the learned counsel for the petitioner has relied on the judgment of the Co-ordinate Bench in the case of **Pravin Eknath Solanke v. State** in **Criminal Writ Petition No.35 of 2021**, Bench at Aurangabad. Observations in paragraph 10 of the said judgment are squarely applicable to the facts of the case, which are as under:

“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 their 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.”

6 I concur with the reasoning articulated in the judgment in the case of **Pravin Solanke (Supra)**. Thus, in consideration of the facts of the case, the petition is allowed and the part of the order, which renders execution of the order dated 2nd June, 2021 conditional, is quashed and set aside. To be more

precise, following part of the Condition (B) of the order is quashed and set aside, which reads as under:

B)after the conclusion of the proceeding initiated by the Revenue Officer and subject to result of the proceeding and also on his execution of indemnity bond of Rs.25,00,000/-

7 Petition is allowed and the Rule is made absolute in the aforesaid terms.

(SANDEEP K. SHINDE, J.)