

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 327 OF 2019

Shri. Balasaheb Vasant Kashid

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

Mr. Ritesh Thobde, a/w. Ms. Swarali Kelkar, Advocate for the applicant.

Mr. A.R. Patil, APP for State.

Coram : Sandeep K. Shinde, J.

Reserved On : 29th September, 2021.

Pronounced On : 7th October, 2021.

P.C. :

1. In this Revision under Section 397 read with Section 401 of the Criminal Procedure Code, the applicant challenges the correctness, legality and propriety of the order dated 14th May, 2019 below Exhibit-23 in Sessions

Case No.71/2017 by which the learned Additional Sessions Judge, Barshi declined to return possession of four wheeler Trax Cruizer to the applicant-accused therein.

2. Background facts are that, the vehicle in question bearing registration number MH-13-CS-0428, was allegedly used in committing the offences punishable under Sections 302, 201, 120(B) read with Section 34 of the Indian Penal Code. The vehicle was seized in May, 2017 in Crime No. 165/2017. It is not in dispute that the vehicle in question was seized in the course of investigation from the possession of the applicant-accused. In May, 2019, applicant moved an application seeking possession of the vehicle. The learned Court declined and rejected the application on the ground that, if possession is delivered, it would wipe out, prosecution's vital evidence. Aggrieved by the decision of the learned

Additional Sessions Judge, its correctness and legality, is challenged in this revision.

3. The discretion conferred upon the Magistrate under Section 357 Criminal Procedure Code, is limited to selection of one of the alternatives namely; delivery of the property to the person entitled thereto or disposal of the same. Section 357, therefore, empowers the Magistrate to decide the question about the person “entitled to possess”. The expression “entitled to possess” would mean a rightful owner. In the case in hand, petitioner is owner of the vehicle and therefore, is a person, entitled to possess.

4. Plain reading of the impugned order implies that the learned Magistrate has failed to exercise the jurisdiction under Section 457 of the Criminal Procedure Code.

5. In consideration of the facts of the case, the impugned order dated 14th May, 2019 below Exhibit-23 in Special Case No.71/2017 passed by the Additional Sessions Judge, Barshi is set aside. The application below Exhibit-23 filed by the applicant-accused is allowed. The learned Sessions Judge shall deliver the possession of the vehicle described in para-4 of the application below Exhibit-23 to the applicant, on such terms and conditions, as he deems fit and proper. The Revision Application is allowed and disposed off in the aforesaid terms.

(Sandeep K. Shinde, J.)