

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

CRIMINAL WRIT PETITION NO.686 OF 2021

Vijay Kashinath Goradkar
Age 39 years, Occupation Business,
Residing at : 12 Katgaokhadi Par,
Near Sunder Haveli, Bhiwandi,
Dist. Thane

...Petitioner

Versus

The State of Maharashtra
(at the instance of Dy. Regional
Transport Officer), Vashi, Block T,
Sector 9/B, APMC Market,
Navi Mumbai, Mumbai-400 705

...Respondent

Mr. Prashant Jadhav i/b Ms. Vishakha Vijay Pandit for the Petitioner

Mr. A. D. Kamkhedkar, A.P.P for the Respondent-State

Mrs. Hemangini B. Patil, Deputy Regional Transport Officer, Navi Mumbai, is present in Court

Mr. Nilesh P. Dhote, Inspector from Deputy Regional Transport Office, Navi Mumbai, is present in Court

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
FRIDAY, 16th JULY 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–State.

3 By this petition, the petitioner seeks release of his vehicle having registration No. MH43AQ9191, make-Toyota Kirlosar Motor Pvt. Ltd., Model Fortuner 3.0L 2 WD MT, Colour White, year 2013, Engine No. IKDU258934, Chassis No. MBJ11JV6104012952, currently lying at RTO Test Ground, Vashi, Navi Mumbai, to the petitioner, forthwith; as well as a direction to the respondent to pay compensation of Rs. 50,000/- to the petitioner.

4 Learned counsel for the petitioner submits that the detention of the petitioner’s vehicle was unwarranted and contrary to the provisions of law. He submits that the petitioner had purchased the said car from Shri Siman Kaskar (Auto Pulse Showroom), who was a successful bidder in the auction conducted by the Kotak Mahindra Bank for the said motor vehicle. Learned counsel relied on the Sale Agreement entered into between the petitioner and Mr. Siman Kaskar dated 2nd July 2018. He submits that after the petitioner had purchased the said vehicle, the RTO duly transferred the

vehicle in the name of the petitioner. Learned counsel relied on the release order for the said vehicle issued by Kotak Mahindra Bank, registration certificate, fitness certificate and PUC of the said vehicle. He further submits that the petitioner has also been paying for the insurance of the said vehicle, since its purchase in 2018. According to the learned counsel for the petitioner, the incident took place on 4th December 2020, when the petitioner's vehicle was standing at BPK Compound, Hirani Road, Near Lucky Hotel, Saki Naka, Mumbai. He submits that an Officer of the RTO approached the vehicle in which the petitioner's driver was sitting and handed over a challan receipt to him. The challan receipt was issued for two offences i.e. as the registration certificate and the PUC of the vehicle were not produced. Learned counsel for the petitioner states that despite the fact, that the petitioner's driver expressed his readiness and willingness to pay the fine, the respondent-Officer took away the said vehicle and refused to release the same. The Officer of the RTO informed the driver that the said vehicle was impounded by them. On 7th December 2020, the petitioner gave a written representation to the respondent seeking release of his vehicle which was allegedly impounded under Section 207(1) of the Motor Vehicles Act. Learned counsel for the petitioner states that without hearing the petitioner, the Officer of the RTO informed the petitioner vide letter dated 15th December 2020 that the said vehicle cannot be released

though the petitioner had annexed the registration certificate and insurance papers as one Balasaheb Chattar was also claiming to be the previous owner of the said vehicle and accordingly, asked the petitioner to obtain an order from the appropriate Court. Pursuant thereto, the petitioner filed an application for release of his vehicle under Section 457 Code of Criminal Procedure. Learned counsel states that as the Court was not inclined to grant any relief as the Court had no jurisdiction, the petitioner was constrained to withdraw the said application. Hence, the aforesaid petition.

5 Learned counsel for the petitioner states that there was no justification whatsoever for the respondent-RTO to seize/impound/detain the vehicle. He submits that Section 207(1) of the Motor Vehicles Act, under which the vehicle was allegedly detained, will not apply in the facts and hence, the detention of the vehicle was clearly illegal, unauthorised and without jurisdiction. He submits that the RTO, by no stretch of imagination, could have detained the vehicle on the premise that the original owner was also claiming ownership of the said vehicle, more particularly, when the petitioner had shown that he had purchased the said vehicle from an auction purchaser and had all the requisite documents showing ownership of the vehicle. He submits that the vehicle is lying in an open condition in Vashi, far from the safe custody as required under the

Motor Vehicles Act. He submits that because of the high-handedness of the officers of the RTO, the vehicle has been subjected to immense damage/wear and tear for 7 months and that the petitioner has also suffered, as a result of the seizure/detention/impounding of the vehicle. He further submits that not only is the seizure/detention/impounding of the vehicle illegal, but is also malafide and in all probability, in collusion with the original owner of the vehicle. He submits that due to the illegal acts of the Officers of the RTO, the petitioner has been deprived of the enjoyment of the said vehicle, resulting in mental stress, agony and harassment and as such the respondent be directed to pay compensation/costs of Rs. 50,000/- to the petitioner. Learned counsel for the petitioner also has an apprehension that some of the valuable parts of the vehicle may have been removed, as the vehicle is lying in an open ground, contrary to the provisions under Section 207 of the Motor Vehicles Act i.e. of maintaining safe custody of the vehicle.

6 Learned A.P.P was unable to justify the seizure/detention/impounding of the said vehicle under Section 207(1) of the Motor Vehicles Act. He submits that the RTO Officer seized/detained/impounded the said vehicle as there was a dispute between the original owner of the vehicle and the petitioner. Under which provision

the same is permissible, the learned A.P.P is not able to spell out. Mrs. Hemangini B. Patil, Deputy Regional Transport Officer, Navi Mumbai, is present in Court. When questioned, she states that as there was a dispute with respect to the ownership of the vehicle, the petitioner was asked to approach the Court for release of the vehicle. Neither the learned A.P.P nor the Deputy RTO Ms. Patil is able to state under which provision of law, the said vehicle was liable to be detained, more particularly, when the petitioner was ready to pay the fine amounts i.e. Rs.400/- for both the violations.

7 Perused the papers. The facts are gross and hence, will have to be set out in detail. It appears that the said Toyota vehicle was originally owned by one Balasaheb Chattar. It appears that as Balasaheb Chattar failed to pay the loan amount, Kotak Mahindra Bank took over the said vehicle. Thereafter, Kotak Mahindra Bank conducted an auction of the said vehicle and in the auction, one Mr. Salim Nachan of Auto Pulse showroom, who was engaged in the business of car trading, purchased the said vehicle. Thereafter, the petitioner purchased the said vehicle from Mr. Siman Kaskar of Auto Pulse showroom by an agreement. The said agreement dated 2nd July 2018 is at page 15 of the petition. The said vehicle was purchased by the petitioner for a sum of Rs. 13,20,000/-. The petitioner has annexed the bank statement showing payment made to Mr. Kaskar through Bank of

India i.e. a sum of Rs. 13,20,000/- as well as the release letter (of the vehicle) dated 28th March 2018 issued by the Kotak Mahindra Bank. The registration certificate of the vehicle was also transferred in the name of the petitioner in 2018 and as such the vehicle stood in the name of the petitioner in the record of the respondent-RTO. The petitioner has annexed the registration certificate, fitness certificate, PUC and the insurance papers/ policy documents of the said vehicle, to the petition.

8 On 4th October 2020, petitioner's Toyota Fortuner Car was standing at BPK Compound, Hirani Road, Near Lucky Hotel, Saki Naka, Mumbai. It appears that an officer of the RTO approached the said vehicle in which the petitioner's driver was sitting and handed over a challan receipt to him. The challan receipt which is also annexed to the petition shows that the said challan was issued for two offences (i) registration certificate not produced and (ii) PUC not produced. Admittedly, for both the offences, the fine amount is Rs. 200/- each i.e. a total of Rs. 400/-. It appears that despite the petitioner's driver expressing his willingness to pay the fine, the Officer of the respondent RTO took away the vehicle from the petitioner's driver and refused to release the said vehicle. The concerned Officer informed the petitioner's driver that the said vehicle has been impounded by them. According to the Officer of the RTO, the said action was taken under

Section 207(1) of the Motor Vehicles Act. On 7th December 2020, the petitioner immediately made a representation to the respondent for release of the vehicle. On 14th December 2020, the petitioner was informed by an officer of the RTO, Navi Mumbai, that the said vehicle was in their custody and that they would not be responsible if any part of the vehicle got misplaced. How such a letter could be issued is again appalling, considering that a duty is cast on the Officer to maintain the vehicle which is seized/detained in safe custody under Section 207(1) of the Motor Vehicles Act.

9 Be that as it may, the respondent again vide letter dated 15th December 2020 informed the petitioner that the said vehicle could not be released although the registration certificate and insurance policy were produced, as one Balasaheb Chattar was claiming to be the previous owner of the Toyota Fortuner vehicle and that he too, was seeking release of the said vehicle. Accordingly, the petitioner was asked to obtain an order from the Court. At this stage, it is pertinent to note that at that time, there was no FIR lodged by Mr. Balasaheb Chattar with respect of any theft of his vehicle either against the petitioner or against Kotak Mahindra Bank, the finance company or any other person.

10 Pursuant to the said letter dated 15th December 2020, sent by the RTO, Navi Mumbai, the petitioner was constrained to file an application under Section 457 Cr.P.C seeking release of his vehicle before the learned JMFC, Vashi, Navi Mumbai. It appears that since the Magistrate was not inclined to grant any relief, as he had no jurisdiction, the petitioner withdrew the application.

11 The conduct of the respondent RTO Officers smacks of high-handedness and arbitrariness. Section 207(1) under which the said vehicle was allegedly seized/detained reads as under :

“207. Power to detain vehicles used without certificate of registration permit, etc.—

(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention or any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle:

Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used

in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof.

.....”

12 There is a reference to Sections 3, 4, 39, 66(i) of the Motor Vehicles Act in Section 207(1), under which vehicle can be seized/detained.

Section 3 is with respect to the necessity for driving license i.e. no person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and no person shall so drive a transport vehicle, other than a motor cab or motor cycle hired for his own use or rented under any scheme made under sub-section (2) of Section 75 unless his driving licence specifically entitles him so to do.

Admittedly, said Section will not apply in the facts of the present case.

Section 4 is with respect to age limit in connection with driving of motor vehicles i.e. it states that no person under the age of

eighteen years shall drive a motor vehicle in any public place, provided that (1) A motor cycle with engine capacity not exceeding 50cc may be driven in a public place by a person after attaining the age of sixteen years; (2) Subject to the provisions of Section 18, no person under the age of twenty years shall drive a transport vehicle in any public place and (3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this Section.

Admittedly, the said Section will also not apply in the facts of the present case.

Section 39 speaks about the necessity for registration i.e. no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place unless the vehicle is registered in accordance with this Chapter and the certificate of registration of the vehicle has not been suspended or cancelled and the vehicle carries a registration mark displayed in the prescribed manner, provided that nothing in this Section shall apply to a motor vehicle in possession of a dealer subject to such conditions as may be prescribed by the Central Government.

Admittedly, the vehicle was registered and the petitioner's name was there on the registration certificate of the vehicle. Hence, even this Section will not apply.

Section 66(i) deals with necessity for permits i.e. no owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used. Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage. Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a goods carriage either when carrying passengers or not. Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

The said Section admittedly will also not apply.

Learned A.P.P does not dispute the fact that none of the aforesaid Sections will apply.

13 It is pertinent to note, that Section 207 empowers a police officer/or other person authorised in this behalf by State Government, to impound a motor vehicle, if he has reason to believe that the vehicle is being driven without registration, without a permit, driven by a person who has no driving licence or plying on unauthorised route and the vehicle may be released only after satisfying that the vehicle complies with the requirement of this Section.

14 None of the above apply to the facts of the present case. The detention of the vehicle was thus, clearly unauthorised, illegal and without any authority. The only offence allegedly committed by the petitioner was that he did not produce the registration certificate and PUC for which the petitioner's driver/petitioner were ready to pay the fine and infact later even produced the said documents. The officers of the RTO ought to have released the vehicle on production of the said documents and on payment of fine. The reason for not releasing the petitioner's vehicle is spelt out in the letter dated 15th December 2020, issued by the RTO, Navi Mumbai, that there was another person by name Balasaheb Chattar, who was claiming

ownership of the vehicle and had produced an old registration certificate. The vehicle at the relevant time, admittedly, stood in the petitioner's name. It is a matter of record. Infact, even in the RTO record, the vehicle stood in the petitioner's name. The learned A.P.P has not raised any doubt on the genuineness of the documents so produced.

15 The RTO Officers were not concerned with the ownership of the vehicle and could not have detained the vehicle on the said premise, more particularly, when the petitioner had produced all necessary documents to show his ownership. The RTO Officers are not adjudicating authorities. The respondent could not have detained the car merely because the original owner of the vehicle had laid his claim to the vehicle, when, the documents produced by the petitioner showed his ownership, even in the RTO records. The genuineness of the documents produced by the petitioner is not disputed. The action of the respondent-RTO smacks of high handedness and probable collusion with the original owner of the vehicle. Admittedly, no FIR was lodged in the present case by the original owner of the vehicle-Balasaheb Chattar, till the vehicle was impounded or immediately thereafter, when the letters dated 14th December 2020 and 15th December 2020 were issued by the respondent. In the facts, the question of detaining the vehicle under Section 207(1) of the Motor

Vehicles Act, did not arise, by any stretch of imagination. The detention of the vehicle was completely unauthorised and illegal. The petitioner who had purchased the vehicle in 2018 was unable to use the car since December 2020 till date, for almost 7 months. The detention of the vehicle has obviously led to further deterioration in the condition of the vehicle i.e. tyres and other parts of the vehicle, as it is lying in an idle condition for about 7 months. The petitioner has been put to tremendous hardships because of the arbitrary actions of the respondent-RTO Officers, who, in the facts, had no authority in law, to detain the vehicle. Even the letter dated 14th December 2020 sent to the petitioner stating therein that they will not be responsible if any part of the vehicle got misplaced, is contrary to Section 207 of the Motor Vehicles Act, inasmuch as, Section 207 (1) talks about temporary safe custody of the vehicle.

16 Having regard to the aforesaid, the petition deserves to be allowed. The respondent-RTO to release the vehicle forthwith. The petitioner to pay fine of Rs.400/-, to the respondent-RTO, if not paid.

17 Considering the brazen conduct of the Officers of the RTO, Navi Mumbai, it would be appropriate to direct the State of Maharashtra to pay costs of Rs. 50,000/- to the petitioner. The said costs to be paid to the

petitioner within eight weeks from the date of receipt of this order. It is open for the State to recover the said amount from the erring officials, who were responsible for the unauthorised detention of the vehicle.

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

19 Matter to be listed under caption `for compliance' on 20th September 2021.

REVATI MOHITE DERE, J.