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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 1740 OF 2021**

Shankar Maruti Bhegade Prop.of  
M/s. Anishwar Suppliers

...Petitioner

Versus

1. The State of Maharashtra  
2. Tahasildar, Ambegaon

...Respondents

Mr. Surel S. Shah i/b Ketan Joshi for the Petitioner.

Mr. S.S.Hulke, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE, J.**  
**DATE : 18<sup>th</sup> AUGUST, 2021**

**P.C. :**

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.
3. By this petition, the petitioner has impugned the order dated 6<sup>th</sup> October, 2020 passed by the learned Joint Judicial Magistrate, First Class, Ghodegaon in Criminal Miscellaneous Application No. 124 of 2020, by which, the learned Magistrate rejected the petitioner's application, seeking release of the seized machine (seized in connection with C.R.No.356 of

2020 registered with the Manchar Police Station, Pune Rural, Pune); as well as the order dated 11<sup>th</sup> November, 2020 passed by the learned Additional Sessions Judge, Khed-Rajguru Nagar, District Pune, below Criminal Application No. 13 of 2020, by which the learned Judge rejected the said application.

4. Learned Counsel for the petitioner submits that the petitioner is the owner of the seized machine i.e. one Hydraulic Excavator machine which is a Poklane machine. He submits that the petitioner had purchased the said machine from Hyundai Construction Equipment Private Limited vide invoice No.11101000609 on 18<sup>th</sup> October, 2020 and that the said machine has also been duly insured with Digit General Insurance on 10<sup>th</sup> August, 2020 till 9<sup>th</sup> August, 2021.

5. Learned Counsel relied on the copies of the machine invoice, machine insurance policy, statement of books of accounts and TIN allotment letter. He submits that one Prasad Gangadhar Vitkar had approached the petitioner for renting out the said machine to him for the purpose of digging a well for agricultural purpose. He submits that pursuant thereto, the petitioner entered into an agreement with Prasad Vitkar on 5<sup>th</sup> October, 2020. Learned Counsel also relied on the Agreement

for Rent dated 5<sup>th</sup> March, 2020. He submits that the said Prasad Vitkar illegally excavated sand on 26<sup>th</sup> April, 2020 with the machine given to him, vide the said agreement and as such, breached the terms of agreement i.e. by illegally using the machine for an illegal purpose i.e. for excavation of sand on river Ghod, District Pune. Learned Counsel submits that as sand was illegally excavated by Prasad Vitkar, an FIR was registered as against him, with the Manchar Police Station vide C.R.No.356 of 2020 for the offences punishable under Sections 353, 379, 504, 506, 188, 269 of the Indian Penal Code; and under Section 48 of the Maharashtra Land Revenue Code.

6. Learned Counsel submits that the petitioner has not been made an accused in the said case which was registered as against Prasad Vitkar. He submits that however, the machine used in the illegal excavation of sand, was seized by the Police.

7. According to the learned Counsel for the petitioner, the petitioner filed an application seeking return of the said machine which was initially rejected vide order dated 23<sup>rd</sup> July, 2020, as there was some discrepancy in the chasis number mentioned in the application and in the insurance policy. He submits that in view of the same, petitioner again

filed an application under Section 457 of the Criminal Procedure Code and sought return of his machine which has also rejected by the learned Magistrate. Being aggrieved by the said order, the petitioner filed a Revision Application before the Sessions Court, which application was also rejected by the learned Sessions Judge vide order dated 11<sup>th</sup> November, 2020. Learned Counsel for the petitioner submits that both the lower Courts had not considered that the petitioner was not an accused in the said case and that the said vehicle was given to Prasad Vitkar vide a lease agreement and that Prasad Vitkar illegally used the said machine for an illegal purpose. Learned Counsel submits that it is always open for the authorities to recover the penalty as arrears of land revenue.

8. Learned APP does not dispute the fact that the penalty imposed by the Revenue Authority can is always be recovered as arrears of land revenue.

9. Perused the papers. As noted above, admittedly, the petitioner is the owner of the Hydraulic Excavator Machine (Poklane) which was purchased by him on 18<sup>th</sup> October, 2010. It also appears that the said machine was given on lease vide agreement dated 5<sup>th</sup> March, 2020 to one Prasad Vitkar. It also appears that Prasad Vitkar was found excavating the sand illegally with the said machine on 20<sup>th</sup> April, 2021, pursuant to which,

an FIR was registered as against Prasad Vitkar. Admittedly, the petitioner is not an accused in the said C.R. It appears that initially, an application was filed for return of the said machine under Section 457 of the Criminal Procedure Code, however, in view of the discrepancy in the Chasis number, the said application was rejected.

10. Learned APP does not dispute the fact, that there is no discrepancy in the Chasis number. It appears that the second application filed by the petitioner for return of the machine was rejected by the learned Magistrate, by observing that it would not be appropriate to release the said machine when the revenue authority had already commenced with the proceedings. The said order passed by the learned Magistrate on 6<sup>th</sup> October, 2020 was confirmed by the learned Sessions Judge vide order dated 11<sup>th</sup> November, 2020 in Criminal Revision Application No. 13 of 2020. Admittedly, the petitioner is the owner of the machine and as noted above, is not prosecuted in the said crime. The machine is lying idle, leading to its deterioration.

11. Considering the aforesaid, there is no impediment in releasing the vehicle in favour of the petitioner, pending the trial, on the following terms and conditions;

## **ORDER**

The petition is allowed on the following terms and conditions;

(i) The impugned order dated 6<sup>th</sup> October, 2020, passed by the learned J.M.F.C., Ghodegaon, below Criminal Miscellaneous Application No. 124 of 2020, as well as the order dated 11<sup>th</sup> November, 2020, passed by the learned Additional Sessions Judge, Khed-Rajguru Nagar, Pune, in Criminal Revision Application No. 19 of 2020, are quashed and set aside;

(ii) The interim custody of the machine i.e. R-210-7-Hydraulic Excavator Poklene Machine, seized in C.R.No. 356 of 2020 registered with the Manchar Police Station, Pune Rural, Pune, be handed over to the petitioner pending trial;

(iii) The petitioner, before release of the machine, shall furnish an Indemnity Bond in the Trial Court, to the satisfaction of the Trial Court, before the release of the machine;

(iv) The petitioner shall also file an undertaking in the Trial Court, stating therein that he will not sell or create any third party

rights in the said machine, till the trial in C.R.No. 356 of 2020 concludes or without the permission of the trial Court;

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

(vi) The Investigating Officer, before handing over the machine to the petitioner, is directed to take photographs of the seized machine at the petitioner's cost and to place the same on the record of the trial Court.

12. Rule is made absolute on aforesaid terms and the Writ Petition is accordingly disposed of on the aforesaid terms and conditions.

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

**REVATI MOHITE DERE, J.**