

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

CRIMINAL WRIT PETITION NO. 2350 OF 2021

Sanjeev Shankar Avhad

...Petitioner

Versus

1. State of Maharashtra

2. Darshan Mohan Bhabad

...Respondents

Mr. B. D. Joshi a/w Mr. Virendra V. Pethe, for the Petitioner.

Ms. P. P. Shinde, A.P.P for the Respondent No.1 – State.

Mr. N. S. Mundargi i/b Mr. Veerdhawal Deshmukh, for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 2nd AUGUST, 2021

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioner has impugned the order dated 4th January 2021, passed by the learned Judicial Magistrate First Class, Manmad, District Nashik, below Cri. M.A. No.221/2020, by which the learned Magistrate rejected the petitioner's application seeking return of the seized machineries under Section 457 of the Code of Criminal Procedure, as well as the common order dated 12th March 2021, passed by the learned Additional Sessions Judge, Malegaon, Nashik, below Revision

Application Nos. 02 and 04 of 2021, by which the learned Sessions Judge dismissed the petitioner's Revision Application No.02 of 2021 seeking return of the seized machineries and instead allowed the respondent No.2's Revision Application No.04 of 2021 also seeking return of the seized machineries, by directing the Investigating Officer or the police station officer of Manmad City Police Station to hand over the custody of seized machineries (seized in C.R. No.883 of 2020, registered with the Manmad City Police Station, Tal. Nandgaon, District Nashik) to the respondent No.2 - Darshan Mohan Bhabad, on certain terms and conditions.

3. Learned Counsel for the petitioner submits that the petitioner is in the business of road construction and crusher and as such owns several machineries required for construction of road i.e. compression machine, crawler loader, breaker pokland etc. He submits that the petitioner from time to time purchased machineries as required for his road construction business. According to the learned counsel for the petitioner in May 2019, the petitioner was doing crushing work in Killing, at Meghalaya. He submits that as the petitioner being a successful bidder was awarded the work of Samruddhi Mahamarg at Aurangabad (Vaijapur) and, as such, in order to complete the said contract of construction of Samruddhi Mahamarg, the petitioner was required to transport the said machineries,

which were at Meghalaya. He submits that since Manmad was closer to Vaijapur then Badlapur and as the petitioner's in-laws were from Manmad, with whom the petitioner had cordial relations, the petitioner decided to keep the said machineries brought from Meghalaya at Manmad. He submits that same was also done to save the transportation charges. According to the learned counsel for the petitioner, the said machineries were kept near the house of Mohan Bhabad on 8th January 2020 at about 7:30 a.m. He submits that when the petitioner was in need of the said machineries which were to be sent to Aurangabad, the petitioner requested his in-laws to hand over the said machineries, so that the said machineries could be sent to Vaijapur for construction of Samruddhi Mahamarg. He submits that the respondent No.2 and others refused to hand over the said machineries, leaving no option for the petitioner, but, to approach the police and other authorities. He submits that the petitioner was constrained to run from pillar to post for registration of an offence as against the accused persons i.e. respondent No.2 and others and that eventually in the month of September 2020, FIR was registered with the Manmad City Police Station, as against respondent No.2 and others. According to the learned counsel for the petitioner, after registration of the FIR, the petitioner realized that the said FIR was not registered as per his say, pursuant to which he approached the Manmad City Police Station. Learned Counsel submits that the petitioner

on realizing that the police were not recording his supplementary statement, approached the Superintendent of Police, Nashik Rural, pursuant to which the petitioner's supplementary statement came to be recorded on 30th September, 2020, in the office of the Superintendent of Police, Nashik Rural. In the said supplementary statement, the petitioner has stated that the alleged agreement shown by the respondent No.2 was forged and that the signature appearing on the said notarized document/agreement was not that of the petitioner and as such requested the police to carry out a detailed investigation. It appears that during the course of investigation only 3 machines were seized. Learned Counsel for the petitioner submits that the police have now seized some more machines, except the spare parts. Learned Counsel submits that the petitioner is the lawful owner of the machineries which were seized and that the learned Sessions Judge ought not to have relied on the notarized document, which was forged and fabricated by the respondent No.2. Learned Counsel has tendered a xerox copy of the Report dated 11th October 2020 of PSI, Manmad Police Station. The same is taken on record. He submits that the impugned common order dated 12th March 2021, passed by the learned Additional Sessions Judge, Malegaon, Nashik, below Revision Application Nos. 02 and 04 of 2021, be quashed and set aside and the police be directed to hand over the custody of the seized machineries to the petitioner.

4. Learned Counsel for the respondent No.2 opposes the petition. He submits that the respondent No.2 had purchased the said machineries from the petitioner for a consideration of Rs.42,00,000/- and that there is a notarized document to that effect. He submits that the respondent No.2 had paid the petitioner Rs.42,00,000/- in cash, for the said machineries. He further submits that no interference is warranted in the impugned common order dated 12th March 2021, passed by the learned Additional Sessions Judge, Malegaon, Nashik, below Revision Application No.04 of 2021.

5. Perused the papers. It appears that the petitioner is in the business of road construction and crusher and as such possesses various machineries required for construction of road i.e. compression machine, crawler loader, breaker pokland etc. It is the petitioner's case that he had purchased machinery in May 2019 for doing crushing work at Killing, Meghalaya. According to the petitioner, as he was a successful bidder and was awarded the contract of carrying out construction of the Samruddhi Mahamarg at Aurangabad (Vaijapur), he was required to bring the said machineries from Meghalaya. It is further the petitioner's case that since Manmad was close to Vaijapur, than Badlapur and as the petitioner's in-laws resided in Manmad, with whom he had cordial relations, he decided to keep the said machineries brought from Meghalaya, at Manmad.

According to the petitioner, when he was in need of the said machineries, and the same were to be sent to Aurangabad, he requested the respondent No.2 and others to hand over the said machineries, as the same were required at the construction site of Samruddhi Mahamarg. The petitioner has alleged that the respondent No.2 and others refused to hand over the said machineries, pursuant to which, he approached the police and other authorities. It appears that in September 2020, FIR was registered with the Manmad City Police Station, as against the respondent No.2 and others. It also appears that subsequently with the interference of the Superintendent of Police, Nashik Rural, with whom a grievance was made by the petitioner, the petitioner's supplementary statement was recorded by the police. In the said supplementary statement recorded, the petitioner has alleged that the notarized document showing purchase of the machineries by the respondent No.2 from the petitioner was forged and fabricated. The said notarized document is on page 103 of the petition i.e. Exhibit - 'C'. It is the petitioner's case that he has not signed the said notarized document. From the perusal of the said notarized document, it appears that the stamp paper was not purchased in the name of the petitioner but in the name of one, Nandsingh Narayan Singh. From the police report dated 11th October 2020 of PSI, Ganesh Jambhale, Manmad Police Station, it appears that the Notary in his statement has stated that the petitioner had not come to sign

the said document i.e. the Notarized document. Infact, the notary – A. I. Shaikh has stated that even he has been cheated by the respondent No.2. The notary has further stated that no document or photo was given as proof of identity of the petitioner and has further stated that some unknown person was made to appear before him to sign the said document. It appears that the petitioner approached the trial Court for return of the 3 machineries seized by the police. It appears that both, the petitioner as well as the respondent No.2 filed applications seeking return of the said machineries in the trial Court under Section 457 of Code of Criminal Procedure. The learned Judicial Magistrate First Class, Manmad, District Nashik, rejected both the said applications vide a common order dated 4th January 2021. Being aggrieved by the said order, both, the petitioner and the respondent No.2 filed Revision Applications before the Sessions Court at Malegaon i.e. the petitioner filed Criminal Revision Application No.02 of 2021 and the respondent No.2 filed Criminal Revision Application No.04 of 2021. The learned Additional Sessions Judge was pleased to dismiss the Revision Application filed by the petitioner and was pleased to allow the Revision Application filed by the respondent No.2. By the said order passed in respondent No.2's revision application, the learned Judge directed the Investigating Officer or the police station officer of Manmad City Police Station to handover the custody of seized machineries (seized in C.R.

No.883 of 2020, registered with the Manmad City Police Station, Tal. Nandgaon, District Nashik) to the respondent No.2.

6. Learned Counsel for the petitioner has annexed to the petition, the documents by which the petitioner has purchased the said machineries, of which release has been sought. It also *prima facie* appears from the statement of the notary as recorded by the police that even the notary has been cheated by the respondent No.2, inasmuch as, the petitioner was impersonated. According to the learned counsel for the respondent No.2, the respondent No.2 had paid cash of Rs.42,00,000/- to the petitioner, for purchase of the machineries. How and when payments were made and why cash amount was paid is not spelt out. Neither are there any bank statements to show the withdrawal of any amounts and from where such a huge amount was generated, is not clear. The respondent No.2 is unable to show payment of Rs.42,00,000/- except bare words of payment having been made, no supporting document is placed on record to show the same. The petitioner has placed on record, documents to show that he is the owner of the seized machineries. The notarized document *prima facie* appears to be doubtful. Whether the same was signed by the petitioner and why and how the respondent No.2 paid Rs.42,00,000/- in cash to the petitioner, are circumstances which *prima facie* raise some doubt on the

alleged transaction of sale of machineries. The petitioner has not been able to avail of the benefits of the said machineries, since September 2020. The learned Additional Sessions Judge, Malegaon, whilst allowing the respondent No.2's revision application has completely overlooked all the aforesaid factors and as such the impugned order cannot be sustained.

7. Accordingly the following order is passed: -

ORDER

- (i) The petition is allowed;
- (ii) The impugned order dated 4th January 2021, passed by the learned Judicial Magistrate First Class, Manmad, District Nashik, below Cri. M.A. No.221/2020, as well as the order dated 12th March 2021, passed by the learned Additional Sessions Judge, Malegaon, Nashik, below Revision Application Nos. 02 and 04 of 2021, are quashed and set aside;
- (iii) The interim custody of the machineries, is handed over to the petitioner pending trial on the following terms and conditions:-
 - (a) The Petitioner shall give an Indemnity/Security Bond of Rs.42,00,000/- (Forty Two Lakhs Rupees Only) in the trial Court before release of the machineries;

(b) The petitioner shall not sell/dispose/create any third party rights in the machineries so released, without the permission of the trial Court or till the conclusion of the trial;

(c) On furnishing the Indemnity/Security Bond, the Investigating Officer or the police station officer of Manmad City Police Station to forthwith handover the custody of the seized machineries (seized in C.R. No.883 of 2020, registered with the Manmad City Police Station, Tal. Nandgaon, District Nashik), to the petitioner;

(d) The Investigating Officer is directed to take photographs of the seized machineries at the cost of the petitioner and to place the same on the record of the trial Court.

8. The Petition is disposed of on the aforesaid terms.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.