

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

CRIMINAL APPLICATION NO.620 OF 2021

Mr. Vinayak A. Adhatrao ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. M.V.Thorat with Mr. Amar Bodke for the Applicant.
Mr. A.D.Khamkhedkar, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 7th SEPTEMBER, 2021.

P.C. :

Heard.

2 This application under Section 482 of the Code of
Criminal Procedure, 1973, challenges the condition no. 3
imposed by the Judicial Magistrate, First Class, Pandharpur
while directing return of property, i.e. vehicle, seized in the
subject crime. Condition no.3 reads as under:

*"3 The present order shall be without
prejudice to the powers of Executive Magistrate to
proceed pursuant to the provisions of section 48
of Maharashtra Land Revenue Code, 1966 and
Section 21 of Mines and Minerals (Development*

and Regulation) Act, 1957 and the vehicle shall not be returned until he exhaust the power in that regard or applicant file No Objection Certificate of Executive Magistrate." (emphasis supplied)

3 The learned counsel for the applicant submitted that the proceedings under Section 48(7) and 48(8) of the Maharashtra Land Revenue Code, 1966 ('**Code**' for short) and the proceedings under Section 457 of the Code of Criminal Procedure, 1973 are distinct, independent and do not overlap each other. It is submitted that exercise of jurisdiction under Section 457 of the Cr.P.C. and the execution of the order passed thereunder cannot be made subject to the order passed under the Code.

4 Herein the learned Magistrate has exercised jurisdiction under Section 457 of the Cr.P.C. but the execution and implementation of the order is made subject to the order passed by the Revenue Officer under Sections 40(7) and (8) of the Code. It was not permissible. Thus, the Magistrate has committed an error in exercise of the

jurisdiction. This error needs to be corrected and accordingly, corrected.

5 For the reasons stated above, the application is partly allowed and hence, following order:

(i) Emphasised, part of Condition No.3, (reproduced hereinabove) stands deleted and order is modified to that extent.

(ii) Respondents shall forthwith release the vehicle bearing registration no.MH-13 CU 9762 to the applicant, if same is not confiscated by the State in exercise of the powers under Section 48(8) of the Code.

6 Application is partly allowed in the aforesaid terms and disposed off.

(SANDEEP K. SHINDE, J.)