

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

CRIMINAL WRIT PETITION NO. 3397 OF 2021

Moula S/o Rajebhai Baluragi

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Shrirang Katneshwarkar a/w Mr. Deepak Pote and Mr. A. B. Kharosekar I/B Mr. Omgashad Baburao Boinwad for the Petitioner

Mr. A. R. Patil, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
MONDAY, 7th MARCH 2022

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. Learned A.P.P waives service on behalf of the respondent– State.

3 By this petition, the petitioner has impugned the order dated 23rd March 2021 passed by the Judicial Magistrate First Class, Akkalkot in Miscellaneous Criminal Application No. 74/2021, only to the extent that it

allows the petitioner's application seeking interim custody of his vehicle “after the conclusion of the proceeding pending before the Revenue Officer or on payment of penalty, if any, imposed by the Revenue Officer”. Learned counsel for the petitioner relies on the order dated 22nd January 2021 passed by this Court (Coram : Mangesh S. Patil, J.) in Criminal Writ Petition No. 35/2021, in particular, para 10 of the said order.

4 Learned counsel for the petitioner submits that the petitioner had filed an application under Section 457 of the Criminal Procedure Code and as such it was incumbent on the learned Judge to pass an order under Section 457 *dehors* the proceedings pending before the revenue authorities under Section 48 of the Maharashtra Land Revenue Code ('MLRC'). He submits that the revenue authorities are competent to pass orders independently and that under the scheme of the said Act, there is a provision for recovery of the penalty amount, in the event, the same is not paid. He submits that the Magistrate could not have passed a conditional order to deposit the penalty amount for releasing the petitioner's vehicle. He submits that the said condition cannot be sustained, being illegal and as such the same be set aside.

5 Learned A.P.P opposes the petition. He does not dispute the fact that the revenue authorities can recover the penalty amount as per the provisions set-out in the MLRC under Section 48 of the said Act, irrespective of any order passed by the Magistrate under Section 457 Cr.P.C. Learned A.P.P submits that there is no ambiguity in the impugned order, inasmuch as, the penalty amount can be deposited by the petitioner, without prejudice to his rights and contentions.

6 Perused the papers. The petitioner had filed an application seeking interim custody of his vehicle which was seized in connection with C.R No. 80 of 2021 registered with the South Police Station, Akkalkot. The said application was allowed by the learned Judicial Magistrate First Class, Akkalkot, vide order dated 23rd March 2021 passed in Criminal Miscellaneous Application No. 74/2021. Whilst allowing the said application, several conditions were imposed by the learned Judicial Magistrate First Class. The petitioner is only aggrieved by clause 1(a) of the said order which reads thus :

“1) The application is hereby allowed subject to following conditions :

a) *Police Inspector, South Police Station is hereby ordered that, after due verification of identity of the applicant Maula Rajebhai Balurgi and particulars of vehicle i.e. vehicle registration number, Chassis and Engine number and after getting confirmation handover interim custody of above said vehicle to the applicant **after the conclusion of the proceeding pending before the Revenue Officer or on payment of penalty, if any imposed by the Revenue Officer.***
.....”

7 According to the learned counsel for the petitioner, once the learned Judge had granted interim custody of the vehicle, the learned Judge could not have put a rider by observing that the said interim custody of the said vehicle to be handed over to the petitioner “after the conclusion of the proceeding pending before the Revenue Officer or on payment of penalty, if any, imposed by the Revenue Officer”. The proceeding before the MLRC is independent of the prosecution initiated by the police i.e. CR No. 80/2021 registered with the South Police Station, Akkalkot. Once the learned Judge was of the opinion that the vehicle ought to have been released, the learned Judge ought to have released it on regular terms and conditions, without the rider as stated aforesaid. The Magistrate has put fetters on the powers conferred upon the revenue authorities under the MLRC under Section 457 of the Cr.P.C. As noted above, revenue authorities have ample power to pass appropriate orders and to take appropriate steps for enforcement of the

orders passed under the MLRC. The said position is not in dispute. By putting this onerous condition and making it contingent upon exercise of powers by the revenue authorities, the learned Judge has misdirected himself and as such, the impugned order to that extent, cannot be sustained.

8 Considering the aforesaid, and in view of the orders passed by this Court on 22nd January 2021 in the case of *Pravin Eknath Solanke vs. The State of Maharashtra*- Criminal Writ Petition No. 35/2021 as well as on 30th September 2021 in the case of *Mallinath Shivanand Zalke vs. The State of Maharashtra* - Criminal Writ Petition 3117/20221, the impugned order dated 23rd March 2021 passed by the learned Judicial Magistrate First Class, Akkalkot below Miscellaneous Application No. 74/2021, to the extent that it imposes a condition on the the Police Inspector while releasing the vehicle i.e.“after the conclusion of the proceeding pending before the Revenue Officer or on payment of penalty, if any, imposed by the Revenue Officer”, is quashed and set aside. The Police Inspector, South Police Station, Akkalkot, to release the vehicle on compliance of all other conditions imposed by the learned Judicial Magistrate First Class, Akkalkot, vide the said order.

9 Rule is made absolute in the aforesaid terms. The application is allowed and disposed of accordingly.

10 All concerned to act on the authenticated copy of this order

REVATI MOHITE DERE, J.