

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 436 OF 2022

Fahimkhan Ishaquekhan Pathan

Age : 32 Years, Occ. Business,

R/o. Naikwadipura, Sangamner, 422605,

Tal. Sangamner, Dist. Ahmednagar

...Petitioner

Vs.

1. IFCO TOKIO General Insurance
Co. Ltd.

Through Authorised Person,

Shri Girish Prabhakar Dalal,

Age : 44 Years, Occ. Service,

R/o. Office – 102, 1st Floor,

Hariprabha Soliterio, Thatte Nagar,

College Road, Nashik,

Tal. Dist. Nashik

2) Sr. Police Inspector,
Sarkarwada Police Station,
Nashik City, Tal. & Dist. Nashik,
(Copy to be served on the office of the
Public Prosecutor, High Court,
Appellate Side, Mumbai)

3) Sau. Meena Vijay Tatiya,
Age 52 yrs., Occ. Household,
R/o. Kamalkunj, 3/2, Patil Park,
Opp. Dongare Ground,
Old Gangapur Naka, Nashik,
Tal. & Dist. Nashik.

4) Sr. Police Inspector,
Kasarwadavli Police Station,
Thane City, Dist. Thane,
(Copy to be served on the office of the
Public Prosecutor, High Court,
Appellate Side, Mumbai)

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- 5) State of Maharashtra
Through P.P., High Court, Mumbai. ... Respondents

Mr.Ejaaz Noormohammad Shaikh for petitioner.

Ms.Purnima Awasthi for respondent No.1.

Mr.Akshay Bankapur i/b Mr. Chetan Deshmukh for respondent No.3.

Mr. S.R. Aagarkar, APP for respondent No.5-State.

CORAM : N. J. JAMADAR, J.
Reserved for Judgment on : 18th APRIL, 2022
Pronounced on : 6th JUNE 2022.

JUDGMENT :

1. Rule. Rule made returnable forthwith and with the consent of the learned counsels for the parties, heard finally at the admission stage.

2. This petition under Article 227 of the Constitution of India, assails the legality, propriety and correctness of the order passed by the learned Additional Sessions Judge, Nashik in Criminal Revision Application No. 65 of 2021, whereby the learned Additional Sessions Judge quashed and set aside the common order dated 7th April, 2021 passed by the learned Chief Judicial Magistrate, Nashik in Criminal Misc. Application Nos. 90 of 2021 and 293 of 2021 and directed Sarkarwada police to hand over the Maruti Eartiga Car seized in C.R.No.163 of 2017 to the respondent

No. 1 -IFFCO TOKIO General Insurance Co. Ltd. (Insurance Company), the applicant therein, with liberty to sell the said car and realise the sale proceeds on the condition of executing an indemnity bond and/or to deposit the sale proceeds with the trial Court in the event it was held that the respondent No. 1 was not entitled to retain the car. Consequently, the application, Cri.M.A.No. 90 of 2021, preferred by the petitioner herein and respondent No. 3 therein, for the custody of the said car came to be rejected.

3. Shorn of superfluities, the background facts leading to this petition can be stated as under :-

(a) Ms.Meena Tatiya, the respondent No. 3, claimed to be the registered owner of the Maruti Eartiga Car bearing No.MH-15-EP-3322 having Chassis No. MA3FLEB1S00278715 and Engine No.D13A50088047. On 5th May, 2017 the respondent No. 1 and her family members had been to Dhule to attend a marriage ceremony. As usual, the said car was parked in front of the house of respondent No. 3 situated at old Gangapur Naka, Nashik. On their return on 17th May, 2017 the car was not found at the place it was parked. Since the car

could not be located despite search, the respondent No. 3 lodged report with Sarkarwada police station, Nashik; on 23rd May, 2017, leading to registration of C.R. No.163 of 2017 for the offence punishable under section 379 of the Indian Penal Code, 1860 (Penal Code). Eventually, police filed 'A' summary.

(b) The car was insured with respondent No. 1-IFFCO TOKIO Insurance Company. The respondent No.1 settled the claim of respondent No. 3.

(c) On 14th December, 2018, Thane police informed Sarkarwada police that a car having engine No. D13A5088047, corresponding to the stolen car was found with a different registration No. MH-12-KY-4718. The said car came to be seized from the custody of Mr.Shaikh Gufran Shan Mohd./ the respondent No. 5, before the revisional Court.

(d) The petitioner who claimed to have purchased the said car from the said Shaikh Gufran filed an application for the return of the said car. The respondent No. 1- IFFCO TOKIO also laid a claim over the said car on the premise that it stepped into the shoes of the registered

owner/insured after indemnifying the insured for the loss of the car.

(f) By an order dated 7th April, 2021 the learned Chief Judicial Magistrate, Nashik was persuaded to allow the application of the petitioner and reject the application of respondent No. 1- Insurance Company holding, *inter alia*, that the ownership of the car was a contentious issue and since the car was seized from the possession of Shaikh Gufran, who had no objection to deliver the car to the petitioner, it would be appropriate to give the custody of the car to the petitioner till the conclusion of the trial subject to furnishing an indemnity bond.

(g) Being aggrieved, the respondent No. 1 – Insurance Company filed revision application before the Court of Session. By the impugned order, the learned Additional Sessions Judge was persuaded to allow the revision application opining that the learned Chief Judicial Magistrate committed an error in ordering the return of the car to the petitioner on the sole ground that the car was seized from Shaikh Gufran. The learned Additional Session Judge was of the view that the material on record,

especially the engine number would show that the car seized from the possession of Shaikh Gufran was the very car which, *prima facie*, appeared to have been stolen. In the circumstances, the respondent No. 1 was entitled to the return of the said car, and also sale the said car as it could not be put to effective and economical use by the respondent No. 1-Insurance Company.

(h) Being aggrieved the petitioner has invoked the writ jurisdiction of this Court.

4. I have heard Mr. Ejaaz Noormohammad Shaikh, the learned counsel for the petitioner, Ms.Purnima Awasthi, the learned counsel for respondent No. 1, Mr.Akshay Bankapur, the learned counsel for respondent No. 3 and Mr. S.R. Aagarkar, learned APP for the State. With the assistance of the learned counsels for the parties, I have carefully perused the orders passed by the Courts below and the material on record.

5. Mr. Ejaaz Shaikh, learned counsel for the petitioner submitted that the learned Additional Sessions Judge committed a jurisdictional error in interfering with an interlocutory order passed by the learned Magistrate under section 457 of the Code of Criminal Procedure, 1973. The learned Additional Sessions Judge

could not have legitimately interfered with the order passed by the learned Magistrate which was in the nature of making an interim arrangement for the custody of the vehicle as there was no positive material to *prima facie* establish that the car recovered from the possession of Shaikh Gufran was the very stolen car. It was further submitted that the learned Additional Sessions Judge was not at all justified in not only directing the return of the car to respondent No. 1 but also permitting it to sell the said car. The order permitting the respondent No. 1 to sell the car is wholly unsustainable as it would completely deprive the petitioner, a registered owner, from substantiating its claim over the car. Therefore, looking from any perspective, according to Mr. Ejaaz Shaikh, the impugned order deserves to be interfered with, in exercise of writ jurisdiction.

6. In opposition to this, Ms.Awasthi, learned counsel for respondent No. 1 stoutly submitted that the respondent No.1 insurer, having already satisfied the claim of respondent No. 3/ the insured, cannot be kept away from the said vehicle. Laying emphasis on the fact that there is no material to show that Shaikh Gufran, from whom the petitioner claimed to have purchased the said car, had lawful title thereto, Ms. Awasthi

strenuously submitted that the claim of the petitioner is equally unsustainable in law. The learned Additional Sessions Judge, according to Ms. Awasthi, was within his rights in correcting the error which the learned Magistrate had fallen into. Any other view of the matter, according to Ms. Awasthi, would give a premium for dis-ingenuity as the persons who were involved in the theft of the car would be allowed to reap the benefits of the crime.

7. Mr.Bankapur, learned counsel for respondent No. 3- original registered owner supported the stand of respondent No. 1.

8. To begin with, few uncontroverted facts. The respondent No.3 Meena Tatiya lodged report on 23rd May 2017 about the theft of a Maruti Ertiga Car with the following particulars :

Registration No. MH15 EP 3322,
Chassis No. MA3FLEB1SOO278715,
Engine No.D13A5088047,
Model : 2014

9. The vehicle was registered in the name of respondent No.3 Meena Tatiya, with the aforesaid particulars. The said vehicle was ensured with respondent No.1-IFCO TOKIO General Insurance Co. Ltd. Indisputably, A-Summary was filed. Thereafter, the respondent No.1 satisfied the claim of respondent No.3 on account of the loss of the said vehicle. On 17th October 2018, a Maruti

Ertiga car bearing registration No.MH-12 KY-4718, Chassis No. MA3FLEB1S00243165, Engine No.D13A5047961 was seized by Thane Police from Shaikh Gufran, near Panchavati Gaurav Hotel, Nashik Highway.

10. The controversy essentially revolves around the question as to whether the said vehicle recovered from Shaikh Gufran is the stolen car in respect of which report was lodged by respondent No.3. The learned Chief Judicial Magistrate culled out the particulars, in paragraph No.38 of the order dated 7th April 2021, as under :

मालकाचे नांव	वाहन क्रमांक	मॉडेल	इंजिन नंबर	चेसीस नं.
मिना टाटीया	MH-15 EP-3322	MARUTI ERTIGA ZDI BSIV	D13A50088047	MA3LEB1S002 78715
फहीमखान पठाण	MH-12 KY-4718	MARUTI ERTIGA ZDI BSIV	D13A5047961	MA3FLE B1S00243165
शेख गुफरान याचे ताब्यातून जप्त वाहन (जप्ती पंचनाम्याप्रमाणे)	MH-12 KY-4718	MARUTI SUZUKI ERTIGA CAR	D13A15088047	MA3FLE B1S00243165
जप्त वाहनाचे तपासणीत आढळून आलेले मुद्दे	MH-12 KY-4718	ERTIGA CAR	D13A5088047	MA3FLEB1S00 243165(X) DE

11. In the aforesaid context, the learned Additional Sessions Judge, after referring to the documents in support of the rival claims, found that the engine number in the record maintained by

the RTO, Shrirampur, wherein respondent No.3 Meena Tatiya was shown as registered owner of the car, tallied with the actual engine number of the vehicle seized by the police from respondent No.5. In contrast, the engine number which found mention in the particulars of the vehicle, of which the petitioner was shown as the registered owner, differed from the engine number which was found on the car seized from Shaikh Gufran. The learned Sessions Judge, thus, noted that the vehicle particulars as maintained by RTO Nashik showing the petitioner as the registered owner of the vehicle did not match with the actual engine and chassis number of the vehicle seized from the possession of Shaikh Gufran.

12. The aforesaid finding recorded by the Additional Sessions Judge is borne out by the record. It is imperative to note that the respondent No. 3 Meena Tatiya lodged report of the theft of the car during the period 5th May 2017 to 17th May 2017. Shaikh Gufran claimed to have purchased the car from Nilesh Nagle. In the application (Criminal Misc. Application No. 10 of 2021), the petitioner claimed that the said vehicle was originally purchased by Shaikh Gufran with the active mediation of Ramizkhan Pathan on 12th June 2017. Since Shaikh Gufran did not have the requisite

papers to avail a loan from the bank, Shaikh Gufran requested the applicant to get the vehicle registered in his name. To avail the loan, the applicant entered into a hire-purchase agreement with HDFC Bank Limited, Sangamner. A sum of Rs. 5,50,500/- was disbursed. Subsequently, the vehicle came to be insured with Chalamandalam MS General Insurance Company Ltd. On 17th October 2018, the said vehicle was seized by Thane Police. The petitioner further claimed that Ms.Kusum Kumbhar was the original owner of the said vehicle and at the time of the sale, the original owner had executed transfer form.

13. In contrast to the aforesaid assertions in the application, in a complaint lodged with Sangamner Police on 17th November 2018, Shaikh Gufran had alleged that Nilesh Nagale, Ramizkhan Pathan and Jitendra Kothari had deceived him in purchasing the car by falsely representing that Nilesh Nagle was the registered owner of the said vehicle. In the subsequent complaint, dated 10th August 2020, Shaikh Gufran alleged that in August 2017, while professing to sell the said car, Nilesh Nagle had told him that the registered owner of the said car was Ms.Kusum Kumbhar, who was his cousin. Shaikh Gufran further alleged that after the said car was seized by police, he realized that Nilesh Nagale had no concern

with the said car and he was deceived.

14. It is pertinent to note that the delivery note purported to be executed on 12th August 2017 evidencing the transfer of the said car records that Nilesh Nagale and Ramizkhan Pathan were the owner and seller of the vehicle and Shaikh Gufran was the purchaser of the said car. In contrast, the certificate of registration of the Car issued by RTO Shrirampur indicates that Mrs.Kusum Kumbhar was the original registered owner of the car bearing No.MH-12 KY-4718, which came to be subsequently registered in the name of the petitioner Fahim Khan Pathan.

15. In the light of the aforesaid stand of the petitioner and Shaikh Gufran, which evidently wavered from one end to another, the learned Additional Sessions Judge was well within his rights in drawing an inference that the material on record, *prima-facie* indicated that the particulars mentioned in the certificate of registration (in the name of petitioner), namely, the engine number and chassis number, were not forthcoming on the car seized from Shaikh Gufran. The confusion is further confounded by the fact that the petitioner does not claim to have purchased the car from Mrs.Kumbhar, the previous owner of the car. In fact, the petitioner claims that he stepped in only because of the fact

that Shaikh Gufran was not having requisite documents to avail the loan to finance the purchase of the car from Mr.Nilesh Nagle. At best, the case of the petitioner and Shaikh Gufran is that Mr. Nilesh Nagle was the owner of the car which they purchased. None of the documents on record indicate that Mr. Nilesh Nagle was the registered owner of the car. The contemporaneous conduct of Shaikh Gufran is of critical significance. It was alleged by Shaikh Gufran, in a complaint to Sangamner Police, that Nilesh Nagle, Ramizkhan Pathan, Jitendra Kothari in pursuance of a conspiracy, cheated him by selling the car of which Nilesh Nagle was not the registered owner.

16. In this view of the matter, it becomes abundantly clear that Shaikh Gufran, or for that matter, the petitioner alleged that that the offences were committed in the course of the transaction under which Shaikh Gufran came in possession of the Car. Evidently, the said transaction was subsequent to the lodging of the report by Meena Tatiya, the respondent No.3. If considered through this prism, the identity of the recovered car, on the basis of engine number, in the circumstances of the case, was sufficient to determine the claim to the possession of the property during the pendency of the trial.

17. The learned counsel for the petitioner would urge that notwithstanding the aforesaid fact situation, since the vehicle was recovered from the possession of Shaikh Gufran, the learned Additional Sessions Judge could not have interfered with the direction to return the car to the petitioner. Reliance was placed on a judgment of this Court in the case of ***Jagannath Bapu Shirsat Vs. State of Maharaashtra and Anr.***¹. In the said case, this Court had given primacy to the claim of a bonafide purchaser for value over that of the registered owner of the vehicle. It was further observed that the general rule with regard to handing over the custody to the registered owner is not applicable to each and every case and if it is found that the opposite party has better right to possess the property, the general rule can be deviated from and the custody of the vehicle can legitimately be delivered to the rival claimant.

18. The aforesaid pronouncement, I am afraid, is of little assistance to the petitioner. It is not a case where the petitioner, or for that matter, Shaikh Gufran claimed to have purchased the vehicle from Meena Tatiya, the respondent No.3. On the contrary, Shaikh Gufran himself claimed to be a victim of the fraud

1 2000 All M R (Cri.) 1 690

perpetrated by Nilesh Nagle. Thus, the dispute is not between a registered owner of the vehicle and a bonafide purchaser for value, in the strict sense.

19. The learned counsel for the petitioner placed reliance on a judgment of Karnataka High Court in the case of ***K.W. Ganapathy Vs. State of Karnataka***². In the said case, the learned Magistrate, while granting interim custody of the car to the petitioner, had refused permission to sell the car. The Karanata High Court found the grievance of the petitioner of being deprived of the incidence of ownership over the car genuine. It was observed as under :

4 After hearing the counsel for the State and the petitioner, I find that the grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non alienation is imposed. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under Section 452, Cr.P.C, the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

20. The aforesaid pronouncement, in my considered view, does not advance the cause of the submission on behalf of the petitioner. On the contrary, it may lend support to the case of the

2 2002 Cri. L.J. 3867

respondent No.1-Insurer.

21. The learned counsel for the petitioner further assailed the impugned order on the ground that the permission to sell the subject car granted by the learned Additional Sessions Judge to the respondent No.1 is wholly unsustainable.

22. The aforesaid submission, though appears attractive at the first blush, does not merit acceptance. In the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat*³, the Supreme Court adverted to the nature and import of jurisdiction under sections 451 and 457 of the Code of Criminal Procedure, 1973. While emphasising the necessity of expeditious action in the matter of disposal of property, at an interim stage, the Supreme Court, in the context of the vehicles, *inter-alia*, observed as under :

Vehicles

15 Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16 However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to

3 AIR 2003 SC 638

its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17 In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18 In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

23. The aforesaid pronouncement was considered by the Supreme Court in the case of ***General Insurance Council and Ors. Vs. State of A.P. & Ors.***⁴, wherein further directions were issued to adhere to mandate of section 451 read with section 457 of the Code, which read as under :-

14 In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by

4 2010 AIR SCW 2967

this Court in Sunderbhai Ambalal Desai (supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/ guarantee to remit the proceeds from the sale/ auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

24. It is in conformity with the aforesaid direction, the learned Additional Sessions Judge permitted the respondent No.1 to sell the car, subject to executing an indemnity bond, thereby undertaking to deposit the sale proceeds with the trial court in the event it was decided that the respondent no.1 is not entitled to retain the sale proceeds of the car.

25. In my considered view, the learned Additional Sessions

Judge was justified in granting permission to the respondent No.1 to sell the car subject to furnishing indemnity bond. First and foremost, the nature of the rival claims. As indicated above, the respondent No.1-insurer stepped into the shoes of the owner of the vehicle Ms. Meena Tatiya, the insured. The material on record, *prima-facie* supports an inference that the car recovered from Mr. Shaikh Gufran is the stolen car. In contrast, the claim of Mr. Shaikh Gufran and the petitioner, on their own showing, is vulnerable in as much as they alleged that Nilesh Nagale and their associates duped them. Secondly, the corporate character of respondent No.1 makes it impracticable to keep the car in an idle state till the conclusion of the trial. Thirdly, an undertaking to indemnify, in case it turns out that the respondent No.1 is not entitled to the said car, is an adequate security for permitting the respondent No.1 to sell the car.

26. For the foregoing reasons, I am persuaded to hold that the learned Additional Sessions Judge committed no error in passing the impugned order. In any event, in exercise of writ jurisdiction, no interference is warranted with the impugned order as interfering with the impugned order would amount to reviving an order, which in the facts of the case, appears to be legally

unsustainable. The petition, thus, deserves to be dismissed.

27. Hence, the following order :

O R D E R

The Petition stands dismissed.

Rule discharged.

No costs.

(N.J. JAMADAR, J.)

At this stage, the learned counsel for the petitioner seeks continuation of interim order passed by this Court on 15th February 2022, as the petitioner intends to challenge this order before the Supreme Court.

The learned counsel for respondent No.1-insurer resisted the prayer.

Having regard to the nature of the impugned order, whereby the respondent No.1 is permitted to sell the subject vehicle, to rule out the possibility of prejudice, interim order passed by this Court on 15th February 2022 is continued for a period of six weeks from today.

(N.J. JAMADAR, J.)