

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

CRIMINAL WRIT PETITION NO. 2014 OF 2022

Landmark Lifestyle Cars Private Limited
Through Surendra Agarwal ...Petitioner

V/s.

The State of Maharashtra and Anr. ...Respondents

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Mr. Rohan Sonawane a/w Ms. Priyanka Pandey, Advocate for the
Petitioner.

Mr. Gaurav Parkar a/w Mr. Shantanu Kadam, Advocate for Respondent
No.1.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Vinod Vasave, API, Worli Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 21st SEPTEMBER, 2022.

PER COURT:

1. The petitioner is first informant in C.R. No.17 of 2020 registered with Worli Police Station, for offences punishable under Sections 408, 465, 467, 468, 471, 201 r/w Section 34 of Indian Penal Code (for short “IPC”). Charge-sheet is filed and case is pending before concerned Court vide C.C. No.682/PW/2020. The respondent No.2 is the accused No.7 in the said case.

2. The petitioner is engaged in business of sale of high end luxury four-wheelers through dealership of international

automobiles brand viz. Jeep and Fiat. C.R. No.17 of 2020 was registered with Worli Police Station, Mumbai on 23.01.2020, alleging that, one Amit Mishra was appointed by the complainant's company as Senior Accounts Manager. He was involved in looking after the affairs relating to the accounts of the Company. He was involved in depositing the payments of Income Tax, GST, Government Tax etc. He was assisted by Satish Sonawane, Sandeep Desle, Sushil Balgude, Swapnil Sawant, Pankaj Patil, Urjit Desai, Kanchan Samant, Saurabh Kumar and Priyanka Rawale. It was revealed that Amit Mishra had started the hotel at Ghodbandar Road, Thane. He has misappropriated the amount of the petitioner-company. It was found that he has committed several other irregularities. He made false entries in the account of the petitioner – company.

3. After registration of First Information Report (for short 'FIR'), investigation proceeded. Accused No.1 was arrested on 29.07.2020. During investigation it was revealed that, accused No.1 had associated with accused No.6 to purchase vehicle being Jeep Compass Limited Edition 2.0 DMT, colour vocal white bearing RTO registration number MH05 DS 5454, Chassis No. MCAAJPCY6JFA33738 and Engine No.4019454 from petitioner-company in the name Respondent No.2 by showing credit note

against demo car received from Automobiles India Private Limited. The vehicle was seized from Respondent No.2 on 31.07.2020. Several other persons were arrested. Respondent No.2 is one of the accused.

4. The petitioner preferred an application for custody of the vehicle before the Court of learned Magistrate vide order dated 7-10-2020. The application was allowed on condition that the petitioner furnishes indemnity bond of Rs.20,00,000/- and bank guarantee of 18,00,000/-. The petitioner shall not use the said vehicle. The petitioner shall produce the vehicle before the Court as and when required.

5. Pursuant to order dated 7.10.2020, the vehicle is in custody of the petitioner. The petitioner cannot use the said vehicle in view of the condition imposed by the Court.

6. Learned Advocate for the petitioner submitted that the vehicle which remain stationary for continuous longer period which would result in rusting of metal parts, cracking of rubber parts and tyres, malfunction of electrical and electronic components etc. The petitioner preferred an application before the learned Magistrate to sell the said vehicle. The petitioner relied upon the recognized valuer's report to substantiate that the said vehicle's condition is

deteriorating and its value is also diminishing by each passing day. As the period lapses, the value of vehicle would depreciate. The learned Magistrate vide order dated 1st January, 2022 rejected the said application. It is submitted that mere having custody of the vehicle is of no use. It is a luxury and high vehicle. The vehicle is lying in the custody of the petitioner since long. The offence is not committed by using the said vehicle. The vehicle was not the part of conspiracy to commit the offence. The photographs of the vehicle has been taken under panchanama and photographs of registration documents of the vehicle will suffice as evidence during trial of the complaint. The sale of vehicle is not in any way will prejudice the rights of the accused. It was enable the petitioner to recover losses.

7. Learned counsel for the petitioner had relied upon the decision of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai V/s. State of Gujarat (2002) 10 SCC 283**.

8. Learned APP submitted that vehicle was seized during investigation. It has been handed over to the petitioner vide order dated 7.10.2020 on certain conditions. The petitioner cannot be permitted to sell the said vehicle.

9. Learned counsel for the petitioner in rejoinder submitted

that, in the event the vehicle is sold to third party, it would not be possible to transfer the said vehicle in the name of the said person. The petitioner is willing to purchase the said vehicle. He submitted that the petitioner is willing to purchase the vehicle for consideration of Rs.9,50,000/-.

10. In the case of **Sunderbhai Ambalal Desai** (supra) dealing with expeditious and judicious exercise of power under Section 451 of Cr.PC. It was observed that, in case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the vehicle is insured with insurance company then the insurance company is informed by the Court to take possession of the vehicle, which is not claimed by the owner or third party. If the insurance company fails to take possession, the vehicles can be sold as per the directions of the Court. It was also observed that the Court shall pass such orders expeditiously and before handing over the possession of such vehicle, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security of return of the said vehicle, if required at any point of time.

11. It is pertinent to note that, the custody of the vehicle has been handed over to the petitioner vide order dated 7.10.2020. Since last two years, the vehicle has lying at the spot. It may not be utilized for any purpose although the vehicle was seized during investigation. It was not used for commission of crime. It is pertinent to note that, the photographs of the said vehicle are already taken by recording panchanama.

12. Considering the peculiar facts of this case, the first informant itself can be permitted to purchase the vehicle on certain terms and conditions. Hence, I pass the following order :

ORDER

- i. Writ Petition No.2014 of 2022 is allowed.
- ii. The petitioner is permitted to purchase the vehicle having description being Jeep Compass Limited Edition 2.0 DMT, colour vocal white bearing RTO registration number MH 05 DS 5454, Chassis No. MCAAJPCY6JFA33738 and Engine No.4019454 for consideration of Rs.9,50,000/-.
- iii. The petitioner shall not transfer the vehicle in the name of any other third person till the final disposal of the trial.
- iv. The petitioner can use the said vehicle.
- v. The amount of Rs.9,50,000/- be deposited before the trial Court.

- vi. If the photographs of the said vehicle are not taken, the same be taken and provided to the trial Court.
- vii. The petitioner shall produce the vehicle in the trial Court if so directed.
- viii. Writ Petition is disposed of accordingly.

(PRAKASH D. NAIK, J.)