

VRJ

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

WRIT PETITION NO.3888 OF 2022

Amol Jagdish Patole

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Mr. S.P. Dighe for the petitioner.

Mr. R.M. Pethe, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 18, 2022

P.C.:

- 1.** By the impugned order, the revisional Court has confirmed the order passed by the learned Magistrate rejecting application of the petitioner filed under section 451 of Code of Criminal Procedure.
- 2.** The dispute is between the petitioner and his wife. The wife filed a complaint dated on 25 September, 2017 alleging theft of articles and car by the present applicant. It is alleged that on 8th September, 2017 the house hold articles and car was taken by the applicant without her permission.
- 3.** During pendency of the proceedings the wife died. It is not in dispute that the present petitioner is the only legal representative of the wife.
- 4.** The Courts below rejected the application mandatory on the

ground, that the name of petitioner does not appear in the R.C. Book. The learned Revisional Court observed that the question that the petitioner is only legal heir of the deceased wife and, therefore, entitled to the custody of vehicle could not be considered at this stage in the absence of any proof to that effect.

5. On perusal of the documents, in my opinion, the applicant being husband of the deceased wife was entitled for the interim custody of the vehicle. Since the applicant is the only legal representative of the wife in absence of divorce between his wife and the petitioner is entitled to the custody of the vehicle under section 451 of Code of Criminal Procedure.

6. Hence, the following order:

a) The order passed below exhibit 14 by the learned Judicial Magistrate, First Class, Court No.3, Nashik is quashed and set aside.

b) The application below exhibit 14 is allowed, subject to condition that the petitioner shall not transfer or shall not change material parts of the car unless it is essential for its smooth running of the car.

7. Rule is made absolute in above terms.

8. Writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)