

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4151 OF 2022

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Aniket Madhukar Limbole

...Petitioner

V/s.

The State of Maharashtra

...Respondent

Mr. Priyal G. Sarda for Petitioner.

Mr. R. M. Pethe, APP for Respondent (State).

Mr. Pravin S. Ombase, Police Constation-718, Chawadi Police Station, Solapur City.

CORAM : AMIT BORKAR, J.

DATE : DECEMBER 19, 2022

PC.:

1. The petitioner is challenging order rejecting Application under Section 452 of Code of Criminal Procedure, 1973, after securing acquittal from the learned Sessions Court.

2. The petitioner was prosecuted for offences under Sections 364(A), 384, 392, 323, 504, 506 read with 34 of Indian Penal Code, 1860. The substratum of prosecution case against the petitioner was that the petitioner alongwith three unknown persons kidnapped the informant in an auto-rickshaw and assaulted by fist blows and forcibly stanchd cash of Rs.15,000/- from him.

3. During the investigation, the petitioner's name was added. The petitioner did not claim the possession of vehicle

during pendency of trial. The learned Sessions Court by judgment and order dated 27th February 2020 acquitted petitioner for offences alleged against him, but issued direction to sale the motorcycle in question by auction and to credit sale proceeds to the Government account.

4. The petitioner on 7th March 2020, filed an Application seeking custody of motorcycle in question. In support of application, petitioner filed documents such as copy of insurance policy, aadhar card and seizure memo. The learned Sessions Court by impugned order rejected the Application mainly on the ground that the petitioner failed to claim ownership of the vehicle in question from the date of offence i.e. from 25th May 2019 till 27th February 2020.

5. Aggrieved thereby, the petitioner has filed the present Writ Petition.

6. Learned advocate for the petitioner invited my attention to the documents produced before the learned Sessions Court such as copy of insurance policy, tax invoice and vehicle debit note issued by the dealer of Suzuki vehicle. Undisputedly, property was taken from possession of petitioner.

7. Learned APP objected for release of vehicle on the ground that failure to seek custody during pendency of proceedings disentitles petitioner from claiming any right over the vehicle. He submitted that on the date of seizure, the vehicle was not having a number plate. He expressed apprehension of commission of fresh crime by using the vehicle in question.

8. I have heard advocates for both sides. The criteria for decision of an Application under Section 452 of Code of Criminal Procedure, 1973, is that normally property needs to be handed over to a person from whose possession the property in question was seized. If there is dispute of ownership of the property, the learned Magistrate may relegate parties to get their dispute adjudicated before competent court. In the absence of dispute of ownership, property needs to be handed over to from whose possession it is taken. In the present case undisputedly property is taken from possession of petitioner. Considering the documents produced before the learned Magistrate in the form of tax invoice issued by the dealer, vehicle debit note and insurance policy in the name of petitioner, the learned Sessions Judge ought to have allowed the Application. For the aforesaid reasons, I pass following order:-

- (i). Application under Section 457 of Code of Criminal Procedure, 1973, filed by the petitioner before the learned Additional Sessions Judge, Solapur is allowed.
- (ii). The respondent is directed to handover possession of two wheeler (Suzuki) vehicle having engine no.AF216021043 and chasis no.MB8DP11AKJ8A16775 to the petitioner within two (2) weeks from today.

9. Writ Petition is, therefore, disposed of. No costs.

(AMIT BORKAR, J.)