

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

CRIMINAL WRIT PETITION NO. 5671 OF 2018

Shaikh Fayyum Shaikh Wahab ...Petitioner
Versus
Shaikh Abdul Rehman Abdul Rashid & Anr. ...Respondents

Mr. Niranjana Deshpande for the Petitioner

Mr. Vishal Navale i/b Tejesh Dande & Associates for the Respondent No. 1

Mr. A. R. Patil, A.P.P for the Respondent No.2–State

PI Mr. Santosh Jadhav is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 1st APRIL 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 counsel for the
respondent No.1 waives notice on behalf of the respondent No.2. Learned
A.P.P waives notice on behalf of the Respondent No.2– State.

3 By this petition, the petitioner has impugned the order dated 24th February 2016 passed by the learned Special Judge (under PC Act), Greater Bombay, below Exhibit 7 in ACB Special Case No. 104/2015, by which, the learned Judge allowed the application preferred by the respondent No. 2 seeking custody of his vehicle i.e. Toyota Innova bearing No. MH-44-G-8383.

4 The principal grievance of the learned counsel for the petitioner is that the petitioner also had documents to show his ownership vis-a-vis the said vehicle i.e. Toyota Innova bearing No. MH-44-G-8383. The grievance of the petitioner is that he was not heard before the impugned order was passed by the learned Special Judge. He submits that the impugned order be quashed and set-aside and the matter be remitted back to the trial Court, with liberty to the petitioner to file an appropriate application seeking interim custody of the vehicle. He further submits that the learned Judge be directed to decide both the applications i.e. the application Exhibit 7 as well as the petitioner's application, on its own merits in accordance with law.

5 Learned counsel for the respondent No. 1 opposes the petition. Learned counsel for the respondent No. 1 states that although the order was passed in February 2016, the said order has been challenged by the petitioner only in 2018 and as such there is substantial delay. He submits that no interference is warranted in the impugned order. He further submits that the learned Judge after considering the documents filed by the respondent No. 1 with respect to ownership of the vehicle, allowed the respondent No. 1's application and granted interim custody of the vehicle to the respondent No. 1.

6 Perused the papers. Admittedly, the petitioner was not a party to the proceedings before the learned Special Judge nor had the petitioner filed any application before the learned Special Judge seeking interim custody. The petitioner is also claiming ownership of the vehicle.

7 Without going into the merits with respect to the ownership of the vehicle in question, it would be appropriate to quash and set-aside the impugned order dated 24th February 2016 passed by the learned Special

Judge below Exhibit 7 in ACB Special Case No. 104/2015 and remit the case back to the trial Court for fresh consideration.

8 Accordingly, the impugned order dated 24th February 2016 is quashed and set-aside and the application filed by the respondent No. 1 seeking custody of the vehicle (Exhibit 7) is restored back to its original file.

9 Learned counsel for the petitioner states that the petitioner will file an appropriate application for the custody of the vehicle within two weeks from the date of uploading of this order.

10 If an application as aforesaid is filed, the learned Special Judge to decide the same along with the application filed by the respondent No. 1 on its own merits in accordance with law. All contentions of all parties are kept open. Till the said applications are decided, the custody of the vehicle to remain with the respondent No. 1. If an adverse order is passed as against the respondent No. 1, the said order shall be kept in abeyance for a period of four weeks to enable the respondent No. 1 to challenge the same.

11 It is made clear that this Court has not gone into the merits of the case and all contentions of all parties are kept open.

12 Petition is disposed of. Rule is made absolute in the aforesaid terms.

13 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.