

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 451/2021

M/s AU Small Finance Bank Limited,
Formerly known as M/s. AU.
Financiers (India) Limited, having its
registered office at 19 A, Dhuleshwar
Garden, Ajmer Road, Jaipur 302001
(Rajasthan).

Having its Branch Office at Madhu Malti
Vihar 1st Floor Necklace Road, Ratanlal
Plot Square, Akola (Maharashtra),
through its authorized person Mr. Vijay
S/o. Ramdas Kamble.

... **PETITIONER**

VERSUS

1. State of Maharashtra through
Officer In Charge, Police Station,
Washim City, Dist. Washim.
2. Shri Arun Harichandra Rathod
Aged 38 years, Occ. Service,
R/o. at Sarkinhi, Post Zodga,
Ta. Barshitakli, Dist. Akola.

... **RESPONDENTS**

Mr. Winy Daigarane, Advocate h/f Mr. Aktar Ansari, Advocate for petitioner.

Mrs. M. H. Deshmukh, APP for respondent No.1/State.

Mr. Pratik B. Ganorkar Advocate h/f Mr. Raju Kadu, Advocate for respondent No. 2.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVING THE JUDGMENT ON</u>	: <u>23/08/2022</u>
<u>PRONOUNCING THE JUDGMENT ON</u>	: <u>09/11/2022.</u>

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The petitioner – Finance Company raises a challenge to the order dated 18.02.2021 passed in Special Case No. 44/2022 below Exh. 3, by which the Special Judge has declined to grant permission to sell a motor vehicle.

4. The facts in brief are that respondent No.2 Arun had purchased a motor vehicle i.e. Maruti Swift Car by raising finance from the petitioner under Hypothecation agreement. Later on, Arun sold said vehicle to one Santosh Thoke by executing an agreement as well as handed over possession to him. Later on, said vehicle was seized from the possession of Thoke in Crime No. 421/2018 alleging that it was

used in a case of kidnapping. The provisions of Maharashtra Control of Organized Crime Act, 1999 ('MCOC Act') were also invoked in said crime. The purchaser Arun has applied to the concerned Magistrate in terms of Section 457 of the Code of Criminal Procedure ('Code') for temporary custody of vehicle which was seized in crime No. 42/2018. The learned Magistrate granted interim custody to Purchaser Arun vide order dated 05.01.2019.

5. Admittedly, petitioner – Financier has also applied for interim custody of vehicle to the Special Court of Amravati. The said application was allowed by which Financier was permitted to have interim custody of vehicle on certain terms and conditions vide order dated 29.07.2020. Later on, again Financier applied to the Special Court of Washim seeking permission to sell the vehicle, however it was rejected vide order dated 18.02.2021 which is impugned herein.

6. The learned counsel for petitioner made exhaustive submissions on the point that the vehicle was hypothicated to the petitioner Finance Company under certain terms and conditions. The borrower Arun has not paid the loan installments as well as sold vehicle to one Thoke in violation of the terms of agreement. It is submitted that the Special Court has already granted interim custody to the petitioner, however rejected permission to sell by stating that the

vehicle may be required in the trial for identification. According to the petitioner, the purpose of identification can be served by producing photographs and description Panchanama. It is submitted that there are every chance of vehicle being ruined if kept lying idle.

7. The respondent No. 2 Arun resisted claim by stating that he is ready to pay loan installments and therefore, permission for sale cannot not be granted. He has produced the order of learned Magistrate dated 05.01.2019 passed in MCC No. 323/2018 by which he was permitted to take interim custody.

8. It reveals that the order of the Magistrate has not been challenged by the Financier. Despite that, the Financier has applied to the Special Court of Amravati after invocation of MCOC Act for custody which was allowed. The situation emerges that there are two inconsistent orders meaning thereby the Magistrate has granted interim custody to borrower whilst the Special Court has granted to Financier. Be that as it may, the Financier has further sought permission to sell the vehicle which was rejected.

9. As a matter of fact, during existence of order of the Magistrate, the Special Court has passed an order of interim custody giving rise to inconsistent finding. As a matter of fact, the Financier

ought to have brought to the notice of the Special Court about existence of order of the Magistrate while seeking custody. The order dated 29.07.2020 of the Special Court under which interim custody was granted indicates that it was not brought to the notice that already contrary order is in existence. The para Nos. 8 and 11 of the order bear reference that borrower Arun has not made a contrary claim for the custody of vehicle. Under such impression, the Special Court has decided the application for grant of custody.

10. There is sanctity attached to the judicial order passed by the Magistrate on 05.01.2019 of granting interim custody to the borrower. Therefore, said fact ought to have brought to the notice of the Special Court while granting interim custody to the Financier. When said inconsistency is noticed by this Court, it is necessary to bring the things in order. Therefore, it is required to decide the matter afresh. The respondents also took objection about jurisdiction of the Special Judge, Washim in passing impugned order. Keeping in mind the earlier order of the Magistrate dated 05.01.2019, the jurisdictional Special Court shall decide afresh the application for interim custody as well as permission to sell the vehicle on its own merits.

11. All the objections raised in this application are kept upon.

12. Petition stands disposed of in above terms.

13. Both sides are directed to appear before the Special Court of Washim on 28.11.2022 for which no separate notice shall be issued.

(VINAY JOSHI, J.)

Gohane

Digitally
signed by
JITENDRA BHARAT
BHARAT GOHANE
GOHANE Date:
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