

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

940 CRIMINAL WRIT PETITION NO.1245 OF 2022

**KRUSHNA TOURS AND TRAVELS THROUGH ITS PROPRIETOR
SHIVAJI KESHAV GIRI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Uttam L. Telgaonkar, Advocate for the petitioner
Mr. Amit Yadkikar, Advocate h/f Mr. D. J. Kamble, Advocate for
the respondent

CORAM : KISHORE C. SANT, J.

DATE : 01st FEBRUARY, 2023

P. C.

1. Heard the learned advocates for the parties. The petition is taken up for finally disposal with the consent of the parties.

2. The petitioner who does a business of travels claims to be the owner of vehicle No. MH-20-EL-8989. A complaint was filed by the petitioner dated 22-10-2020 against the respondent. The main allegation is that the respondent/accused used to take vehicle of the petitioner on rent since he was required to travel frequently. The vehicle in question i.e. Innova Crysta was given on rent to the respondent. On 26-08-2020 the accused wanted the said vehicle on rent. However, the petitioner shown his

inability to give the said vehicle on that day since it happens to be a day of Mahalaxmi celebration and no driver was available. The respondent therefore, told the petitioner that he has made arrangement of driver and asked for vehicle and he also promised that he would pay arrears of the rent amount and transferred amount of Rs.9,81,000/- through RTGS. Since the vehicle which was given to the accused was to be transferred in the name of one Chavan and therefore, in the said vehicle some blank documents for transfer of vehicle with signature of the petitioner were lying. It is further alleged that the accused by taking undue advantage of those documents has stolen the vehicle.

3. Both the parties filed an application under Section 457 of Cr. P. C. in the court of learned JMFC for possession of the vehicle. The application filed by the respondent/accused bearing Criminal M. A. No. 2196/2020 came to be allowed and the application bearing Criminal M. A. No. 2222/2020 filed by the petitioner-complainant came to be dismissed. The learned JMFC directed to hand over the custody of the vehicle in favour of the respondent by recording the finding that though the vehicle stands in the name of petitioner in RTO record still there is voluminous record available to show that the vehicle was to be transferred in the name of the accused. It is considered that the respondent-accused has transferred the amount of Rs.9,81,000/- through RTGS in the bank account of the informant and the

bank has also issued no dues certificate. It is also considered that a Form Nos. 29 & 30 are signed by the petitioner for transfer of the vehicle in the name of respondent. It is further considered all three keys of the vehicle were with the respondent. Considering the dates it is clear that on the same day the signatures were made on the documents. The amount was transferred. The learned court also relied upon the judgment *reported in 2007 Cr.L.J. 819 in the case of Rabindra Kumar Pati Vs State of Orissa* and in the case of *S. Kapur Vs Bhalchandra G. Naik and ors 1996 (2) Bom Cr. 624*. The court also further considered the judgment in the case of *Jagannath Bapu Sirsath Vs State of Maharashtra reported in 2000 Cri.L.J. 4224* and *Kishan Pandurang Kagade Vs Baldev Singh Gain Singh 1977 Mh. L. J. 665*. The court also relied upon the judgment in the case of *Sunderbhai Desai and C. M. Mudliar VS State of Gujrat reported in AIR 2003 SC 638* and directed to give custody of the vehicle in favour of the respondent/accused.

4. Criminal Revision Application No.6/2021 came to be filed by the petitioner. The learned Additional Sessions Court, Aurangabad after considering the argument and record dismissed the criminal revision and maintained the order dated 04-12-2020 passed by the learned JMFC, Aurangabad.

5. The petitioner has thus come to this court challenging the impugned order. The main submission of the

petitioner is that the vehicle stands in the name of the petitioner in the RTO record. When the entire record of the RTO shows that vehicle is in the name of the petitioner there is no question of giving custody of the vehicle to any other person. It is clear that being tourist vehicle all the documents were in the vehicle as required. He submits that the vehicle was taken by the accused on rental basis and therefore, he was having the custody of the vehicle. It is not disputed that both the parties are having cordial relation since long and therefore, having custody of the vehicle with the accused does not necessarily mean that vehicle was handed over to the accused with an intention to transfer the same.

6. The learned advocate for the petitioner relied upon a judgment in the case of *S. Abdul Jabbar Vs Khaleel Ahamed and Ors reported in ILR 1986 KAR 1769* wherein it is held that the custody of the vehicle needs to be given to a person in whose name the vehicle stands in the RTO record.

7. Learned advocate for the respondent vehemently opposed the petition saying that all the documents and the attending circumstances clearly show that the vehicle is sold by the petitioner to the accused. He submits that even the documents are executed for transfer of the vehicle in the name of accused. It is a matter of record that the petitioner has signed transfer documents in respect of said vehicle in favour of the

respondent. He further submits that amount of Rs.9,81,470/- was transferred through RTGS in the account of the petitioner towards consideration. He submits that all keys of vehicle are also with the respondent. He relied upon the judgment reported in *Manu/MH/0216/1991 in the case of Virendrakumar J. Handa Vs Dilawarkhan Alij Khan and Ors.* He also relied upon the judgment in the case of *Jagannath Bapu Shirsat Vs State of Maharashtra and another reported in 2000 (2) Mh.L.J. 605.* He submits that in both these judgments it is held that the court while deciding such application has to consider that who is having superior right to hold the vehicle. From para 19 of the *Vijendrakumar (supra)* he points out that merely having documents in the name of person cannot make him entitle to custody vehicle. It is held that mere fact that registration of the vehicle stands in the name of party is not conclusive. It is for the Magistrate upon appreciation of the material before him, records a finding that the ownership and possession had passed to a particular person, then it is open for the Magistrate to direct the vehicle to be handed over in the custody of the such person notwithstanding that registration stands in the name of another. From the judgment in the case of *Jagannath (supra)* he points out that in that case also respondent No.2 had parted with huge money by giving a cheque of the similar amount to the finance company. The vehicle was delivered to respondent No.2 even no objection certificate from the finance company was also issued. In para 11 of the said judgment this court has held that the

Magistrate is required to consider the better right to possess the property. The learned Magistrate though is not required to decide the question of title, the learned advocate further invites attention of this court to the section 15 of the Motor Vehicle Act and more particularly to Section 50(3) which provides for situation where the transferor or transferee fails to report to the registering authority the fact of transfer within a period specified in clause-(a) and (b) of Subsection (1). Thus he submits that even the Motor Vehicle Act takes care of such a situation where the vehicle is not yet transferred in the name of transferee. The learned advocate for the petitioner at this stage produced on record some documents. Learned advocate for the petitioner objected the production of the documents saying that these were not produced before the trial court and those are not forming part of record. In the alternative he submits that even from those documents, the petitioner cannot establish a better right to possess the vehicle. First document, agreement to sale of vehicle executed by the petitioner in favour of the person Parmeshwar Chavan. However, said document is after the registration of the FIR and this court finds that it is not relevant. There is also a document i.e. agreement to sale in favour of the present respondent executed by the petitioner. This court feels that no purpose would be served by considering these documents.

8. In view of the submissions and the documents this court finds that learned JMFC has applied his mind to the fact

and has also considered the material on record. The learned Sessions court also applied mind and has passed the order by considering the entire material. This court finds that no perversity is pointed out in the findings recorded by the learned Sessions Court in the revision. The courts below has rightly considered.

9. The learned APP supports the order passed by the courts below.

10. By taking into consideration all the attending circumstances and mainly that the amount of consideration is already transferred in favour of the petitioner and that there were also documents of transfer signed by the petitioner this court finds that no case is made out to call for interference in the impugned order. Hence, the petition stands failed and disposed off.

[KISHORE C. SANT, J.]

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