

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.874 OF 2020

WITH

INTERIM APPLICATION NO.849 OF 2022

WITH

INTERIM APPLICATION NO.792 OF 2022

IN

CRIMINAL WRIT PETITION NO.874 OF 2020

Rajendra Chalbihari Agarwal .. Petitioner

v/s.

State of Maharashtra And Anr. .. Respondents

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Mr. Priyal G. Sarda, for the Petitioner.

Mr. A.R. Patil, APP, for Respondent State.

Mr. Ramgopal S. Tripathi, for Respondent No.2.

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CORAM : R.G. AVACHAT, J.

RESERVED ON : 16 FEBRUARY 2023.

PRONOUNCED ON : 20 FEBRUARY 2023.

JUDGMENT:-

The challenge in this writ petition is to the order dated 20 December 2019, passed by Court of Additional Sessions Judge, Greater Mumbai, in Criminal Appeal No.446 of 2017. The Petitioner was prosecuted for offence punishable under

Sections 406, 420, 465, 467, 468 and 471 of Indian Penal Code in Criminal Case No.569/PW/2013. He came to be acquitted from the said case vide judgment and order dated 7 January 2017, passed by the Court of Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai. The Petitioner was prosecuted pursuant to the FIR lodged by Respondent No.2 herein. It was alleged in the FIR that the Informant/Respondent No.2 purchased Crane No.NL-01-K-1778 for Rs.35 lakhs. It was given to the Petitioner herein for operating the same for a period of six months. The Petitioner, however, forged and fabricated the documents and got the crane registered in his name at RTO, Nagaland. He then raised a loan of Rs.45 lakhs from Kotak Mahindra Bank, as against hypothecation of the said crane.

2. The issue involved in this writ petition is as to who shall be entitled to have custody of the crane post acquittal of the Petitioner. The trial court, vide its impugned judgment and order dated 7 January 2017, directed the muddemal property, i.e. the crane, to be retained by Respondent No.2 (Informant) until the decision of the competent authority/court about the ownership or registration of the same, subject to the conditions imposed by this Court in Criminal Application No.1209 of 2014 dated 23 January 2015.

3. The aforesaid order was passed under Section 452 of Code of Criminal Procedure. Said order was, therefore, amenable to appeal. The Petitioner preferred appeal against the said order. The Court of Additional Sessions Judge, Greater Mumbai, dismissed the Petitioner's appeal. He is, therefore, before this Court in this petition.

4. Learned Advocate for the Petitioner would submit that, during investigation of the crime, the crane was seized from the Petitioner's possession. In view of the Petitioner to have been acquitted of the criminal charge and the order of acquittal to have attained finality, he is entitled to have the crane restored back to his possession. He first took this Court through the orders regarding custody of the crane passed, pending the trial. In his view, all those orders, including one passed by this Court in Criminal Application No.1209 of 2014 dated 23 January 2015 relating to grant of custody of the crane, pending the prosecution, were interim orders. Since the criminal case to have been finally decided, and orders of acquittal passed therein to have attained finality, the order regarding interim custody of the crane lost their efficacy. The operative part (regarding custody of the crane) of the order dated 7 January 2017 passed by Additional Chief Metropolitan Magistrate, 11th Court, Kurla, Mumbai, reads thus:

“(iv) Muddemal property i.e. Crane shall be retained by P.W. 1 Mayank Agarwal until decision of the competent authority/Court about the ownership or registration of the same subject to the conditions imposed by Hon’ble High Court in Criminal Application No.1209/2014, dated 23.1.2015.”

5. He would further submit that the Respondent had fraudulently got the crane registered in his name. The RTO, Nagaland, has cancelled the said registration. The crane was first registered in the name of the Petitioner on 16 September 2010. The Petitioner has even raised a loan as against hypothecation of the said crane. This Court was taken through oral evidence of the witnesses in this case. The crane was inspected, pursuant to the order passed by this Court in Writ Petition No.634 of 2016 on 25 February 2016. The inspection report indicates that chassis and engine number of the crane claimed to have belonged to the Respondent, is altogether different than one owned by the Petitioner. The Engine number of the crane belonging to Respondent No.2 is 50671. The Petitioner purchased non-functioning huge DEMAG Crane worth Rs.35 lakhs under Engine No.300724 and Chassis No.249012. He paid the consideration amount in cash and through RTGS as well. The witnesses in that regard were examined before the trial court. The crane was given to one Abdul Rehman for repairing work in his

garage. The repairing expenses, amounting to Rs.22 lakhs, were borne by the Petitioner. Abdul Rehman was the prosecution witness in the case. According to learned Advocate, the crane is stationary at a road-side. The Petitioner, being entitled to its custody, has every right to make use thereof to earn his living. Learned Advocate has relied on a judgment of Apex Court in case of *HDFC Bank Ltd. vs. Reshma & Ors.*¹ to ultimately urge for grant of the petition.

6. Learned Advocate for the Respondent would, on the other hand, submit that the Petitioner has not been honourably acquitted. The Petitioner's acquittal is based on benefit of doubt. There is voluminous evidence to indicate the Respondent to have purchased crane from its owner, Rahul. The relevant evidence was brought to the notice of this Court to ultimately urge for dismissal of the petition.

7. Considered the submissions advanced. Perused the FIR, evidence relied on, the judgment of acquittal and order passed by the appellate court dismissing the Petitioner's appeal, taking exception to the order refusing to grant him custody of the crane.

1 (2015) 3 Supreme Court Cases 679

8. The facts in case of *HDFC Bank* (supra) are quite different. It was a dispute between a financier, with whom the vehicle was hypothicated, and registered owner of the vehicle.

Section 452(1) of the Cr.P.C. reads, thus:

“452. Order for disposal of property at conclusion of trial. - (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.”

The phraseology of Section 452 suggest that order regarding delivery of any property may be in favour of a person claiming to be entitled to possession thereof.

9. True, the Petitioner has been acquitted of the charge. Admittedly, both the Petitioner and the Respondent have close relations *inter se*. It was the case of the Respondent that he had his father were residing in Nasik. The Petitioner stays in Mumbai. The Petitioner is in crane service business. The Respondent and

his father happened to visit the Petitioner in Mumbai. The Petitioner agreed to help them purchase a crane. As such, the Petitioner only acted as a middleman. It is not in dispute that the crane originally belonged to Rahul Kankalu. There is evidence to indicate that the Respondent paid Rahul a sum of Rs. 20 lakhs by RTGS. Rahul also acknowledged to have received Rs.5 lakhs in cash. According to the Respondent, he purchased the crane for Rs.35 lakhs. It was he who borne expenditure of repairing charges.

10. This being a writ petition under Article 227, this Court would not go into factual matrix of the case. It is true that, what is discernible from the evidence in the case was that at the same time, the Petitioner transferred a sum of Rs.10 lakhs to the account of the Respondent. Rahul also acknowledged to have received Rs.5 lakhs through RTGS from the Petitioner. There is also evidence to indicate that the Petitioner to have deposited Rs.25,000/- twice the account of the Respondent's father. The record further indicates Abdul Rehman, who repaired the crane, admitted to have been paid repairing charges by the Petitioner. The Petitioner also raised the loan from HDFC Bank against the crane and he repaid the same.

11. It is true that, during investigation, the crane was taken charge of from the possession of the Petitioner. The Petitioner may, therefore, be justified to claim the custody of the crane back to him on his acquittal. The record, however, indicates that both the Petitioner and the Respondent are economical with truth. No real transaction between the two was disclosed. According to the Respondent, he purchased the crane and allowed the Petitioner to ply the same for six months. During the said period, the Petitioner clandestinely got it registered in his name, that too in Nagaland. The stand of the Petitioner during cross-examination of the witnesses is that he purchased the crane and the Respondent and his father agreed to finance the same. The Petitioner, thus, came closer to truth. The close scrutiny of the evidence on record would indicate that both the Respondent and the Petitioner have contributed for purchase of the crane. A xerox copy of a letter addressed by the present Petitioner to Senior Police Inspector, Chembur Police Station, dated 12 September 2012, was brought to the notice of this Court. True, this document was not admitted in evidence before the trial court. Learned Advocate for the Petitioner would submit that since this document was not part of evidence, could not be looked into. He did not disown the said letter. The said letter records that the Petitioner and the Respondent bought the non-functional mobile

crane on 2 August 2010 from Rahul against payment of Rs.35 lakhs. The crane was transferred by RTO, Nagaland, on September 2010. The Petitioner incurred total expenditure of Rs.28 lakhs to make the crane functional. The letter further records that he was ready to resolve the matter and handover the crane to the Respondent, if he (Respondent) pays him Rs.45 lakhs.

12. Even if we ignore the aforesaid letter, it has already been observed above that there is evidence to indicate that both the Petitioner and the Respondent had paid little over Rs.15 lakhs each to the crane owner Rahul. Admittedly, RTO, Nagaland, had cancelled registration of the crane in the name of both the Petitioner and the Respondent as well. The order of cancellation of registration is subjudice before High Court at Guwahati. The appellate court did observe that considering the pendency of the dispute about registered owner of the crane, it is not **proved** to handover the crane to the Petitioner. On the other hand, the trial court was justified in observing that until the competent court decides the claim of ownership, the custody of the crane shall be with the Respondent, is found to be in accordance with law. On the basis of the record, there is reason to observe that the crane was jointly purchased by both the Petitioner and the Respondent.

The Petitioner plied the same for some months. He, however, appears to have got it registered in his exclusive name. Allowing the Respondent to continue with the custody of the crane would not amount to allowing an unauthorised person to retain custody thereof. Needless to mention sale of a motor vehicle is governed by Sale of Goods Act. Although registration of a vehicle in terms of provisions of Motor Vehicles Act, is mandatory, the Petitioner would do well to approach the civil court to establish his claim of exclusive ownership, if any, over the crane. Since this Court found the Petitioner and the Respondent to have paid consideration amount for purchase of the crane, this Court is not inclined to interfere with the order impugned in this writ petition.

13. The petition, thus, fails and is dismissed.

14. In view of the disposal of the writ petition, nothing survives in the interim applications taken out therein. The same are, therefore, disposed of.

(R.G. AVACHAT, J.)