

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

CRIMINAL WRIT PETITION NO.1263 OF 2021

Nikita Jignesh Shah

.... Petitioner

versus

The State of Maharashtra & Ors.

.... Respondents

.....

- Mr. Ashok M. Chopra a/w Ms. Vinita Jain, Advocate for Petitioner.
- Mr. S. R. Samel i/b. Rajeev Sawant & Associates, Advocate for Respondent No.3.
- Ms. M. R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 26th JUNE, 2023

P.C. :

1. Heard Mr. Ashok M. Chopra, learned counsel for the Petitioner, Mr. S. R. Samel, learned counsel for the Respondent No.3 and Ms. M. R. Tidke, learned APP for the State.
2. The Petitioner has challenged the two orders passed by the Additional Chief Metropolitan Magistrate, 24th court, Borivali, Mumbai, in CC No.822/N/2020. The first order was

passed on 24/12/2020 and the second order under challenge was passed on 29/12/2020. Both these orders were challenged before the Court of Sessions at Dindoshi, Greater Mumbai. After the Revision Application was dismissed, the Petitioner has challenged both these orders in this Petition. The Petitioner is the original first informant who had lodged FIR vide C.R.No.770/2020 on 12/10/2020 at Malad Police Station u/s 406, 420, 467, 468, 471 of the Indian Penal Code.

3. The gist of the FIR is that the first informant and her husband were knowing accused Suresh Grover and his family. Because of their friendship, the accused Suresh used to take their car frequently. The said car was purchased by the first informant-Petitioner by taking loan from the HDFC Bank. The EMI was being paid from the informant's account maintained with Saraswat Co-op Bank, Malad Branch, Malad (W), Mumbai. The EMI was paid till February 2018. But the next month's EMI was pending. Suresh's son took the car with the informant's permission on one occasion. The documents of the car were in

the car itself. After that, the first informant received communication from HDFC Bank that the loan was fully repaid and NOC was also issued. The first informant was suspicious and made enquiries. She came to know that the car was transferred in the name of the Respondent No.3 herein. Therefore, she lodged the FIR.

4. The investigation went on and at the time of passing of both the impugned orders Suresh, who is the Respondent No.2 was shown as the only accused. During pendency of the investigation Suresh passed away. Before that, both these impugned orders were passed. The Petitioner as well as the Respondent No.3 made separate applications for return of the vehicle, which was seized during the investigation. The order dated 24/12/2020 records that the Petitioner was served with the said application preferred by the Respondent No.3 and that she had remained absent and had not opposed. After noting the fact of the case, the learned Judge observed that prima facie the Respondent No.3 appeared to be the owner. He was already in

possession of the vehicle that was seized and therefore learned Judge thought it fit to return the vehicle to the Respondent No.3 by way of the interim order with the condition that he had to produce the same as and when required by the Court during the trial and that he should not transfer the vehicle.

5. The Petitioner approached learned Magistrate and pointed out that she had also filed application for return of the vehicle. However, the learned Magistrate did not change the operative part of his order dated 24/12/2020. He only stayed that order for a period of 7 days. Therefore, as of today, possession of the vehicle is with the Respondent No.3. It is also registered in his name.

6. Learned APP on instructions of the Investigating Officer states that the investigation is almost concluded but no report is filed before the Magistrate as of today.

7. Learned counsel for the Petitioner submitted that the

possession and the ownership of the vehicle were taken away from her on the basis of fraudulent transaction and on the basis of forged documents. Therefore, she is the rightful owner and is entitled to the possession of the vehicle. He submitted that though her application was pending for return of vehicle, the learned Magistrate committed error in observing that the Petitioner did not oppose the Respondent No.3's application for return of the vehicle.

8. Learned counsel for the Respondent No.3 submitted that, he is the bonafide purchaser. He had paid the last installment of the unpaid loan with the HDFC Bank, at the instance of the original accused Suresh. Since he was not aware of the allegations made against Suresh, he remains the bonafide purchaser. The vehicle is registered in his name. He was having the possession of the vehicle, when it was seized by the police. Therefore there was no reason to interfere with the impugned orders.

9. I have considered these submissions. It appears that the learned Magistrate exercised his powers u/s 457 of the Cr.P.C. in returning the vehicle by way of interim measure. The order was passed perhaps under the expectation that the trial would take place and some conclusion can be reached at the end of the trial. However, even the investigation is not yet complete and because of death of Suresh, no further steps were taken by the Investigating Officer. Ultimately, the investigating agency will have to file some report regarding their investigation and conclusion, before the learned Magistrate. The impugned orders are passed only by way of interim arrangement u/s 457 of Cr.P.C. The issue is not concluded. The next stage is yet to take place. Therefore both the parties can still approach the learned Magistrate for passing final order regarding return of vehicle pointing out all the factors. Both the parties are also at liberty to take further steps in accordance with law, which are available to them.

10. In this view of the matter, I do not see any reason to

interfere with the impugned orders at this stage. Both the parties are at liberty to take further steps as are permissible in accordance with law.

11. With these observations, the Petition is disposed of.

12. It is made clear that this Court has not expressed its opinion on the merits of the matter.

(SARANG V. KOTWAL, J.)