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

CRIMINAL APPLICATION NO. 594 OF 2023

Akash Gangadhar Kharat

..... Applicant

Vs.

State of Maharashtra & Anr.

..... Respondents

Ms. Surbhi Agrawal with Deepak Pote for the Applicant

Smt. A. S. Pai, GP with Ms. M. H. Mhatre, APP for the State

**CORAM: NITIN W. SAMBRE &
R.N.LADDHA, J.**

DATED : JULY 12, 2023

P.C.

1. The Applicant was apprehended in C.R.No.283 of 2023 registered for the offence punishable under Section 379 of the Indian Penal Code after his vehicle being Registration No.MH-02-FT-1880 was found to be involved in the commission of offence. The person who was riding the motor vehicle has removed the movable property from the pocket of the Complainant Ashok Balu Bhowad, by committing an act of theft and as such an offence came to be registered.

2. It appears that only after the apprehension, the Applicant disclosed the name of co-accused viz. Krishna Shetty to whom the Applicant had given his aforesaid vehicle for use who has committed the alleged offence in question.

3. The submissions are, merely because the Applicant is the registered owner of the vehicle, he cannot be made responsible unless there is an element of *mens rea* in the commission of offence.

4. The learned APP submits that it is only after the arrest of the Applicant, during the investigation, the Applicant has disclosed the involvement of the accused Krishna Shetty and that being so, the Applicant is trying to support the co-accused.

5. The Applicant is charged for the offence of theft. Apart from the above, the vehicle used in the commission of offence being Registration No.MH-02-FT-1880 is owned by the Applicant, is not a fact in dispute. The use of the aforesaid vehicle in the commission of crime in question is reflected from the statements of the complainant.

6. The fact remains that during investigation, the Investigating Agency has not noticed the involvement of the accused. There is no iota of evidence so as to infer that the Applicant has connived with the co-accused Krishna Shetty in the matter of commission of offence. Apart from the above, the stolen article is not recovered from the custody of the Applicant. The accusations against the Applicant in the backdrop of the alleged offence punishable under Section 379, particularly having regard to the definition of "Theft"

under Section 379, it cannot be said that the Applicant had intention and has dishonestly removed the movable property from the possession of the complainant without his consent nor the Applicant has moved such stolen property. As such the ingredients of the offence of theft cannot be inferred against the Applicant.

7. For the aforesaid reasons, the present Application stands allowed in terms of prayer clause (a).

(R.N.LADDHA,J)

(NITIN W. SAMBRE,J)