

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

**CRIMINAL WRIT PETITION NO.2535 OF 2023
WITH
CRIMINAL WRIT PETITION NO.2536 OF 2023**

Popat Ashok Navale ..Petitioner
Versus
The State of Maharashtra & Anr ..Respondents

Mr. Vaibhav R. Gaikwad a/w Yash Naik, Advocate, for Petitioner in both Writ Petitions.
Ms. M.R. Tidke, APP, for State/Respondent in both Writ Petitions.
Ms. Sairuchita Choudhary, Advocate, for Respondent No.2 in both Writ Petitions.

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**CORAM : SARANG V. KOTWAL, J.
DATE : 25th JULY 2023**

PC :

1. Both these Petitions are decided together by this common order because of an anomalous situation that has arisen because of apparently contradictory orders passed by the same Court of the Additional Session Judge-2, Baramati, District Pune. In Writ Petition No. 2536 of 2023, the main prayer is for quashing and setting aside the order dated 15.7.23 passed by the learned Additional Sessions Judge-2, Baramati, District Pune below Exh.1 in Criminal Review Application No.45 of 2023. In Criminal Writ

Petition No.2535 of 2023 the main prayer is for quashing and setting aside the order dated 20th June 2023 passed by the learned Additional Sessions Judge-2, Baramati, District Pune in Criminal Revision Application No.28 of 2023.

2. The brief background of this case is quite interesting. The Petitioner had lodged the FIR vide Crime No.147 of 2023 at Yavat Police Station, Pune Rural on 12th February 2023 under Sections 406, 420, 504, 506 r/w 34 of the Indian Penal Code. It is his case in the FIR that he was the owner of a car i.e., Ford Endeavour bearing No. MH12TN7999. He had purchased that car by obtaining loan from Axis Bank and he was paying the EMI. It became difficult for him to pay the EMI and, therefore, he decided to sell that vehicle. It is his case that the Respondent No.2's husband Rajendra Pagar showed interest in purchasing that vehicle. The purchase price was fixed at Rs.38 lakhs; the Respondent No.2's husband had paid him Rs.5,51,000/- at the first instance and gave him some cheques. The agreement was executed on a stamp paper in the name of the Respondent No.2. After that, there was a dispute about the payment. The car was

given in possession of the Respondent No.2 but the entire payment was not made and, therefore, this FIR was lodged. During the investigation, the car was seized.

3. The Petitioner herein made an Application vide Criminal Miscellaneous Application No.94 of 2023 in the Court of Judicial Magistrate First Class, Daund, ("JMFC") for return of the vehicle.

4. The Respondent No.2 opposed this Application. It was her case that she had made payment to the tune of more than Rs.17 lakhs. According to her, a false FIR was lodged. Therefore, she opposed the Application made by the Petitioner for return of the vehicle. She made her own prayer in that reply, asking for return of the seized vehicle.

5. This Application i.e. Criminal Miscellaneous Application No.94 of 2023 was decided by the learned JMFC, Daund vide his order dated 1st April 2023. The Vehicle was directed to be handed over to the Petitioner herein on the condition of furnishing Bank guarantee of Rs.40 lakhs.

6. The order of the learned Magistrate was separately

challenged by the Petitioner as well as the Respondent No.2. The Petitioner filed Criminal Revision Application No.35 of 2023 and the Respondent No.2 filed Criminal Revision Application No.28 of 2023 before the Additional Sessions Judge-2, Baramati, district Pune.

7. The confusion started when the learned Additional Sessions Judge-2, Baramati, district Pune passed two contradictory orders in both these Revision Applications on 20th June 2023. On the Revision preferred by the Petitioner herein i.e., in Criminal Revision Application No.35 of 2023, the learned Judge passed an order allowing that Revision Application. The condition of furnishing Bank guarantee was modified and the Petitioner was asked to furnish Indemnity Bond for the said amount. On that same date, the learned Judge also decided the Criminal Revision Application No.28 of 2023, preferred by the Respondent No.2 herein and directed the Police Inspector, Yavat Police Station to handover the interim custody of the same vehicle to the Respondent No.2. Thus, the effect of the two orders was that, the Investigating Officer had to handover the possession of the vehicle

to both the contesting parties.

8. As the events unfolded further, the Investigating Officer handed over the custody of the vehicle to the Petitioner immediately after the orders dated 20th June 2023. Further, when the contradiction was noticed, the Investigating Officer preferred an Application before the same learned Judge i.e., the Additional Sessions Judge-2, Baramati, district Pune by way of Criminal Review Application No.45 of 2023 under Section 362 of Cr.P.C. for altering the judgment for a clerical mistake. On this occasion, the learned Additional Sessions Judge-2, Baramati, district Pune entertained that Review Application and directed the Investigating Officer to follow the order passed in Criminal Revision Application No.28 of 2023 with the effect that the Respondent No.2 was to get that vehicle. The said order was passed on 15th July 2023.

9. Now, the grievance of both the parties is that the situation has created complications. The learned Counsel for the Petitioner submitted that the Review Application was not maintainable and, therefore, the order dated 15th July 2023,

passed in Criminal Review Application No.45 of 2023 is not sustainable in law. In spite of that, summons was issued against him for return of the vehicle. At this stage, the Petitioner has approached this Court, challenging these apparently contradictory orders.

10. The grievance of the learned Counsel for the Respondent No.2 on the other hand is that in spite of the clear direction of the learned Additional Sessions Judge-2, Baramati, district Pune the vehicle is still retained by the Petitioner herein and, therefore, she opposes grant of any relief in both these Writ Petitions.

11. The discussion herein above is self-explanatory. This confusion is created by the three different orders passed by the learned Additional Sessions Judge-2, Baramati, district Pune. To compound the matter further, as submitted by the learned Counsel for the Respondent No.2, that, when the Criminal Review Application No.45 of 2023 was decided, none of the parties i.e., the Petitioner and the Respondent No.2 herein was heard. Therefore, in any case, the order in Criminal Review Application

No.45 of 2023 passed by the learned Additional Sessions Judge-2, Baramati, district Pune will have to be set aside, so that both the parties get an opportunity to put forth their submissions.

12. Considering this factual situation, the only practical solution, in my opinion is to set aside all the orders passed by the learned Additional Sessions Judge-2, Baramati, district Pune and direct him to decide both the Revision Applications afresh. Apart from that, there is one more issue, the learned Judge will have to address, since the Revision Applications were preferred before him. He is required to consider whether the order passed by the learned Magistrate is an interlocutory order and, therefore, whether the Revision Applications were maintainable or not. Till the learned Additional Sessions Judge decides those Revision Applications, some protection by way of interim arrangement needs to be made. As of today, the vehicle is in possession of the Petitioner and, therefore, this arrangement can be continued till those Revision Applications are decided by the learned Additional Sessions Judge-2, Baramati, district Pune.

13. Considering the apprehension expressed by the learned Counsel for the Respondent No.2, the Revision Applications are required to be decided expeditiously within a time bound manner.

14. Hence, the following order:

O R D E R

i) The order passed by the learned Additional Sessions Judge-2, Baramati, district Pune in Criminal Revision Application No.28 of 2023, the order passed in Criminal Revision Application No.35 of 2023 and the order passed in Criminal Review Application No.45 of 2023 by the same learned Additional Sessions Judge-2, Baramati, district Pune, are all set aside.

ii) The learned Additional Sessions Judge-2, Baramati, district Pune shall decide Criminal Revision Application No.35 of 2023 and Criminal Revision Application No.28 of 2023 afresh in accordance with law. They shall be decided

together expeditiously and as far as possible within a period of two months from today.

iii) Till the Revision Applications are decided, status-quo as far as custody of the vehicle is concerned, shall be maintained.

iv) The maintainability of both the Revision Applications is also left open to be decided by the Additional Sessions Judge-2, Baramati, district Pune.

v) With these observations both the Writ Petitions are disposed of.

(SARANG V. KOTWAL, J.)