

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

CRIMINAL APPLICATION NO.956 OF 2021

Nitin Shankarlal Chug	...	Applicant
Versus		
State of Maharashtra		
And Others	...	Respondents

* * *

Mr. Mohammed Kazi for the Applicant.

Ms. M.H. Mhatre, APP for the Respondent-State.

Mr. Rushit Thakkar for Respondent No.2.

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CORAM : NITIN W. SAMBRE, J.

DATE : 8 AUGUST 2023

P.C.

1. The prayer of the applicant in the application is for quashing of the impugned Order dated 23 January 2017 passed by the 6th Judicial Magistrate First Class, at Bhiwandi, Thane in OMA Nos.2284 of 2016 and 2789 of 2016.

2 The learned Magistrate had passed the following Order against the Applicant, which reads as under :

1. The Application No.2284 of 2016 is hereby rejected in respect of the prayer for releasing Disputed Muddemal i.e. Yarn.

2. The application no.2789/16 is allowed.
3. Seized Muddemal i.e. Yarn shall be released in favour of the applicant namely Ganesh Chhapandas Kesarwani on execution indemnity bond of Rs.6,40,000/- (Six Lakhs Forty Thousand Only).
4. The applicant in OMA No.2789/16 is directed not to alienate, transfer or to create any third party interest in the seized muddemal during pending the trial. He shall produce it before the Court whenever the order.
5. The investigation officer is directed to prepare detail panchnama and take three photographs of the said Disputed Muddemal at the cost of the applicant while delivering it to the applicant in OMA No.2789 of 2016.
6. The investigation office is directed to file the photographs and panchnama with the chargesheet.
7. Inform to the concerned police station to release the Disputed Muddemal under intimation to court.

3 The present applicant being aggrieved approached the learned District Judge in revision. The learned Session Judge dismissed the revision of the applicant. As such, this application is filed under Section 482 of the Cr. P.C.

4 The submissions of learned Counsel for the Applicant are that the subject matter is permitted to be in favour of the Respondent

that is the cotton yarn, which is the property of the applicant. According to him, his claim to the property substantiated by the documents produced before the Learned Magistrate and are also part of the record of the Sessions Court. According to him, the applicant was the complainant and the property was sealed at the behest of the applicant and that being so, he is entitled for the custody which as such based on the documentary evidence which is ignored by both the courts below. Apart from above the contentions are being made of the claim of the applicant being genuine, is that the investigating officer has given no objection for release of custody of the cotton yarn in favour of the applicant.

5 Counsel for the non-applicant would oppose the prayer based on the observations.

6 I have considered the rival submissions.

7 The recovery is in Crime No.I-135/16, which is punishable under Sections 381, 411 and 34 of the IPC. The Magistrate while dealing with the claim has specifically recorded findings as to the documents produced by the non-applicant thereby demonstrating his lawful claim to the property in question. Apart from above, the Magistrate has already invoked the non-applicant in whose favour

the Order of release is passed to comply with the condition of production of the yarn at an appropriate stage of the trial. Apart from above, the Sessions Court while dealing with the claim has noticed that the observations of the Magistrate in para-11 are based on the documentary evidence and has refused to exercise revisional jurisdiction as the revisional Court has failed to notice any error in the exercise of jurisdiction by the Magistrate.

8 This Court is in agreement with the findings recorded by the Magistrate, which are based on the documentary evidence produced by the non-applicant on record. Apart from above, the interest of the applicant is already safeguarded by the incorporation of conditions in the Order of release of property in favour of the non-applicant on Supratnama. The order appears to be in the requirement under Chapter- 84 of Section 451 of Cr.P.C.

9 In view of the above and having regard to the facts, no case for interference is made out. The Criminal Application stands dismissed.

(NITIN W. SAMBRE, J.)

RAJESH
VASANT
CHITTEWAN

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