IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.4559 OF 2021

Harshil Haren Choksey …..Petitioner
Versus
The State of Maharashtra …. Respondent

Mr. Girish Kulkarni, Senior Advocate a/w. Karan Mehta, Nishant Shah, Punit Vyas, Ashwin Pande, Karan Bhosle, Darshan Juikar i/b. Karan Mehta and Associates for the Petitioner.

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

CORAM : SARANG V. KOTWAL, J.

DATE : 04th OCTOBER, 2023

P.C. :

1. The Petitioner has challenged the order dated 11.2.2020 passed by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai rejecting the Petitioner's application for discharge in C.C. No.213/PW/2010 preferred under Section 239 of Cr.P.C.. The Petitioner is facing the charges under Sections 420, 465, 468, 471, 120-B of IPC. The order passed by the learned Magistrate was challenged before the Court of Sessions vide

Criminal Revision Application No.262/2020. Said Revision Application was rejected by the Additional Sessions Judge, Greater Mumbai vide order dated 24.9.2021. The Petitioner has challenged both these orders before this Court.

2. Heard Shri Girish Kulkarni, learned Senior Counsel for the Petitioner and Shri A.R. Patil, learned APP for the State.

3. The case arises out of investigation in C.R. No.3/2009 registered at Yellow Gate Police Station, Mumbai. The FIR was lodged by PI Vilas Kanade attached to Economic Offences Wing, Unit-1, Crime Detection Branch, Mumbai. It is mentioned in the FIR that as an off-shoot of the orders passed in Writ Petition No.1064/2007, C.R. No.30/2008 was registered at Malabar Hill Police Station, Mumbai in respect of forgery of documents in respect of imported cars. The offence was transferred to the Economic Offences Wing vide C.R. No.60/2008. During further investigation, more such instances came to the notice of the investigating agency and hence C.R. No.3/2009 was registered at Yellow Gate Police

Station. It is mentioned in the FIR that from 2004 about 48 vehicles were imported on T.R. facility and they were registered at Mumbai RTO. All these vehicles were expensive luxury cars. They were imported in India to the ports at Mumbai, Chennai, Cochin, Mormugao as well as other ports. When the documents were checked, the investigating agency found difference in the manufacturing year mentioned in the invoice and in the documents tendered to RTO. While importing those vehicles, the year of manufacturing was shown as earlier year so that the customs-duty for old vehicle could be levied at lesser rate. The addresses of the importers in the documents were found to be false. There was forgery of the engine number and the chassis number. On this basis, the FIR is lodged.

4. The investigation was carried out and the present Petitioner was shown as one of the accused along with his father. At the conclusion of the investigation, the charge-sheet was filed. The Petitioner was mentioned as 'accused No.25'. His father Haren was shown as 'accused

No.1'. The Petitioner's father was shown to be involved in the transactions of eleven vehicles. As far as the Petitioner is concerned, he was shown to be concerned with the transaction involving two vehicles bearing MH-01-YA-2201 and MH-01-YA-7000. The customs duty for importing these vehicles were paid from the Petitioner's account maintained with Karur Vysya Bank. For making payment, loan was obtained from that bank. It is the case in the charge-sheet that while obtaining loan the Petitioner had submitted a forged document in respect of the purchase of vehicle from the importer. After that the vehicle bearing No.MH-01-YA-7000 was sold to Sachin Joshi. The Petitioner accepted the amount from the purchaser. Thus, he was involved in the transaction.

5. Learned Senior Counsel appearing for the Petitioner made following submissions :

i. The forgery in the records showing the earlier manufacturing year was done in Dubai by the importers. The Petitioner had no role to play in that forgery.

ii. The tampering of the chassis number and engine number was also done in Dubai. The Petitioner merely acted on the documents submitted by the importers. He could not be aware of the forgery in respect of those vehicles.

iii. The vehicles were lying in the docks. Nobody had claimed them as importers could not pay the customs duty, therefore the Petitioner merely paid the customs duty. That does not mean that the Petitioner was hand in glove with the importers.

iv. As per the Rules, the vehicle could not be transferred for one year and, therefore, there was no question of the vehicle being transferred in the Petitioner's name.

v. He further relied on the orders passed by the Joint Commissioner of Customs confiscating the vehicles and directing payment of higher customs-duty based on the actual year of manufacturing. Two separate orders were passed in respect of these two vehicles. Those orders were passed against the original importers i.e. Ajikumar Hasan Mohd. Hasniyar and wife of Aboobacker Moideen. There was no reference to the Petitioner's name in that order. The order itself shows that the offence was committed by those importers. The Petitioner was an innocent dealer and could not have known about the evil design of the importers. He further submitted that in any case the dealership business is of his father and the Petitioner was a college-going boy and therefore, he could not be made an accused.

6. Shri Patil, learned APP, on the other hand, relied on various statements included in the charge-sheet which were also referred to by Shri Kulkarni. Shri Patil in particular relied on the statement of one Chiragkoli Unnikrishnan who was an official agent with the Mumbai Customs House. He also relied on the statements of subsequent purchasers i.e. Sachin Joshi and Furniturewala.

He submitted that even when the documents were tendered to the RTO in Mumbai, that time the correct year of manufacturing showing that the vehicles were new were mentioned. Both these documents were to the knowledge of the Petitioner and, therefore, he had knowingly participated in the commission of the offence.

7. I have considered these submissions. As far as these two vehicles are concerned, Sachin Joshi had purchased MH-01-YA-7000 from the Petitioner and his father. He has stated that he was friend of the Petitioner. He was knowing the Petitioner and his father Haren. In November, 2006 the Petitioner told him that the Petitioner's father had a second-hand Toyota car for sale. This witness showed interest in purchasing that car. He was told that the car was imported by Ajikumar Hasan, a resident of Cuffe Parade. He was shown the documents. He was told that the Petitioner had purchased that car from Ajikumar. This witness showed interest in purchasing that car. The price was fixed at Rs.34 Lakhs. Sachin Joshi paid Rs.20 Lakhs. A cheque was issued

in the name of the present Petitioner. The remaining amount of Rs.14 lakhs was yet to be paid. The car was transferred in Sachin Joshi's name on 23.3.2007. In those documents, the year of manufacture of the car was shown as 2005.

8. The other car i.e. car bearing No.MH-01-YA-2201 was sold to Mohammedali Furniturewala. His statement mentions that in December, 2007 the Petitioner called him and told that he had an imported car for sale. In January again the Petitioner called him. This witness went to the Petitioner's office. He was shown the documents related to the car. The car was registered with Tardeo RTO and the owner was shown as Nasima Abubakar Moiddin, resident of B. Desai Road, Mumbai. The price was fixed at Rs.17,50,000/-. He paid that amount. Out of that amount, Rs.10 Lakhs were paid by cheque. Inspite of this payment, the car was not transferred in this witness's name. In March, 2009 the Petitioner's father told him that an offence was registered in respect of that car and that the police were in search of that car. The Petitioner's father advised him to

keep low and to keep the car concealed. He told this witness that he should inform the police that the car was purchased from one Prakash from Dubai and that the payment was made in cash. The Petitioner's father was continuously calling this witness from different phone numbers. However, this witness told the true story to the police.

9. The other important statement is of Chiragkoli Unnikrishnan, which is relied on by the learned APP. As mentioned earlier, he was an authorized agent of Mumbai Customs House. He has stated that in April, 2006, he had gone to the office of the Petitioner and his father. He was told that Ajikumar Hasan Mohammed Hasyeenar had imported the car and it was at Nhava Sheva Port. The Petitioner and his father gave the job of clearing that vehicle to this witness and for that, he was promised Rs.15,000/-. At that time, the Petitioner's father gave him documents in respect of that vehicle. In those documents, the year of manufacture was shown as '1998'. Accordingly this witness

submitted the documents for customs clearance. During the further action, the vehicle was inspected and because of some suspicion the assistance was taken from Toyota Kirloskar. They reported that the chassis number was not correct and the year of manufacture was '2005'. Accordingly the customs duty was valued as per the correct manufacturing year and penalty was also imposed for giving false information. After this order, the Petitioner paid the customs duty which was deposited by this witness on 10.8.2006.

As can be seen that after all this the same car was sold by the Petitioner to Sachin Joshi. Thus, the Petitioner was fully aware that the year of manufacture was tampered with, documents were forged and yet by concealing all these facts the same vehicle was sold to Sachin Joshi. For all these transactions, the Petitioner's bank accounts were used.

10. The statement of K. Ganeshan working with Karur Vysya Bank is also important. He has stated that the

Petitioner had made an application for obtaining loan to the tune of Rs.20 Lakhs for purchasing the vehicle MH-01-7A-7000 and had shown willingness to hypothecate that vehicle with the bank. He had submitted an agreement between the Petitioner himself and Ajukumar Hasan. The vehicle was hypothecated with the bank and, therefore, it was necessary to put the stamp of hypothecation on the R.C. book but the Petitioner never produced R.C. book for that purpose; instead, subsequently he repaid the loan.

11. Thus, it can be seen that, at every stage, the Petitioner has played an active role. He has obtained vehicle loan without submitting the documents viz R.C. Book for hypothecation with the bank. He was aware that the year of manufacture was wrongly mentioned for the purpose of fixing the customs duty. When the vehicle was sold to Sachin Joshi the correct year of manufacture was mentioned. There is nothing to show that the Petitioner had made any payment to the real owners of the car. The forged documents were used. Even the Customs Department was

given the false information. All this was to the knowledge of the present Petitioner. Therefore, at the stage of framing charge, it cannot be said that there is no grave suspicion against the present Petitioner. The matter certainly requires full-fledged trial. At this stage, the Petitioner cannot be discharged from the case.

12. The learned Magistrate as well as the learned Additional Sessions Judge have not committed any error in rejecting the application of the Petitioner for discharge and the Revision Application respectively. There is strong material against the present Petitioner, and, therefore, he cannot be discharged. Therefore, I do not find any substance in this Writ Petition. The Writ Petition is dismissed.

(SARANG V. KOTWAL, J.)