

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.716 OF 2022

Mahindra & Mahindra Financial Services
Ltd. Through its Authorised
Representative Mr. Arif Abdul Waheed
Khan, Legal Manager, Aged about 45
years, Occ: service, office at 7/A, Patil
Complex, Ground Floor, Opp. S.T. Bus
Stand, Ganeshpeth, Nagpur-440009. ... PETITIONER

---VERSUS---

1. State of Maharashtra,
Through Police Station Officer, Kanhan,
Tah. Parshivani, Distt. Nagpur.
2. Sandip s/o Damodhar Batulwar
Aged about 39 years, Occ: Private,
R/o Ward No.01, Jivanapur, Kuhi, Tah.
Kuhi, Dist. Nagpur. ...RESPONDENTS

Shri M.R. Joharapurkar, Advocate for petitioner.
Shri S.A. Ashirgade, APP for respondent no.1.

CORAM : G.A. SANAP, J.
DATED : JANUARY 04, 2023.

ORAL JUDGMENT :

1. **Rule.** Rule made returnable forthwith. Heard finally by
consent of learned advocate for the petitioner and learned
Additional Public Prosecutor for the respondent no.1/State. The

respondent no.2 though served remained absent.

2. The order dated 25.11.2021 passed by the learned Judicial Magistrate First Class, Kamptee, Court No.2 in Miscellaneous Criminal Application No.556 of 2021 is challenged by the petitioner. The petitioner is a finance company. The respondent no.2 had borrowed the vehicle loan from the petitioner-company. On purchase of the vehicle bearing registration No.MH-40/BL-3419 the same was hypothecated with the petitioner. The vehicle was involved in commission of crime therefore the same was seized by the police in crime bearing Crime No.221 of 2021 registered at Kanhan Police Station for the offences punishable under Section 407 read with Section 34 of the Indian Penal Code.

3. The petitioner-company made an application on 07.10.2021 in the Court of Judicial Magistrate First Class at Kamptee for grant of custody and possession of the vehicle. In the said application, the investigating officer filed reply on 24.11.2021. During the pendency of this application, the vehicle owner Sandip Damodhar Batulwar made an application for handing over the custody of the vehicle to him on 22.11.2021. The Police filed say to

this application on 25.11.2021. The custody of the vehicle was claimed by the petitioner being financier with whom the vehicle was hypothecated as well as by the registered owner.

4. The learned Magistrate instead of deciding both the applications together, first decided the application subsequently made by the registered owner on 25.11.2021 and subject to certain conditions ordered the delivery of the custody of the vehicle to the registered owner Sandip.

5. The petitioner came to know about this order later on. Therefore, the petitioner has challenged the said order on multiple grounds. One of the grounds is that either both applications should have been heard and decided together or the application made by the petitioner being first in point of time should have been decided first.

6. The reply filed through investigating officer by the State has supported the order in favour of owner of the vehicle.

7. It is to be noted that when say was filed by the investigating officer to the application made by the registered owner on 25.11.2021 it was duty of the investigating officer to disclose the

pendency of the application for the same purpose by the petitioner before the same Court. The investigating officer had filed say to the application made by the petitioner on 24.11.2021. It therefore goes without saying that the investigating officer had knowledge of the pendency of the application made by the petitioner. The investigating officer was therefore required to disclose this fact in the reply filed to the application made by the registered owner subsequently i.e. on 25.11.2021. It is further pertinent to note that in absence of knowledge of the pendency of the application made by the finance company (the petitioner in this petition), the learned Magistrate decided the application made by the registered owner on 25.11.2021. The learned Magistrate in the order has categorically stated that except the registered owner nobody has claimed the custody of the seized vehicle. This observation would indicate that pendency of the application made by the petitioner was conveniently concealed from the Court.

8. In my opinion, the investigating officer was duty bound to disclose the real state of affairs before the Court. Perusal of the application made by the petitioner-finance company would show that the registered owner was the party to the said application as a

non-applicant no.2. The Roznama placed on record indicates that the vehicle owner remained absent. The application made by the registered owner would show that the petitioner-finance company was not made party to the application for obtaining the custody of the vehicle. In my view, therefore, the application made by the finance company being first in point of time ought to have been decided either before the application made by the registered owner or together with the application made by the registered owner.

9. Shri M.R. Joharapurkar, learned advocate for the petitioner relying upon the decisions of Calcutta High Court in the case of **M/s. Cholanandalam Investment & Fin Co Ltd Vs. State of West Bengal** reported in **Law Finder Doc ID#1458971**, Karnataka High Court in the case of **K.W. Ganapathy Vs. State of Karnataka** reported in **Law Finder Doc ID#1225** and this Court in the case of **Tata Capital Financial Services Limited Vs. State of Maharashtra and others** (Criminal Application (APL) No.430 of 2014), submitted that in such situation custody of the vehicle can be handed over to the finance company and finance company can be allowed to sell the vehicle.

10. In my view, on both counts the order passed by the

learned Magistrate without hearing the finance company and before taking any decision on the application made by the finance company cannot be sustained. The petition therefore deserves to be allowed. The petition is allowed.

11. The impugned order dated 25.11.2021 passed by the learned Judicial Magistrate First Class, Kamptee, Court No.2, below Exhibit-1 in Miscellaneous Criminal Application No.556 of 2021 is set aside.

12. The application bearing Miscellaneous Criminal Application No.556 of 2021 is restored to the file.

13. The learned Magistrate on restoration of the application made by the registered owner shall decide the application made by the petitioner-finance company and the registered owner together after giving opportunity of hearing to all the parties.

14. The learned Magistrate shall take all such necessary steps to secure the custody of the vehicle in the meantime.

Rule made absolute in above terms.

JUDGE

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