

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1439 OF 2023

Bhupinder Balwant Singh

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

VISHAL
SUBHASH
PAREKAR

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Mr. Tariq Khan, for the Applicant.

Mr. S.R. Agarkar, APP, for the Respondent/State.

Mr. M.K. Guha a/w. Mr. Arendra Kumar, for Respondent No. 2.

Mr. Rahul Patil, PSI, Powai police station.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 5, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The challenge in this application is to an order dated 4th November, 2023 passed by the learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai whereby the learned Magistrate directed that the interim custody of the seized articles i.e. original title deed i.e. Agreement For Sale of the house property executed in between Vinita Estate Private Limited, and Rajeev Kutty and his wife, registered on 6th May, 2008, and the share certificate of the said flat be handed over to the applicant Rajeev Kutty, respondent No. 2 herein.

3. Mr. Khan, the learned counsel for the applicant submitted that the applicant had preferred an application in the year 2022

and by an order dated 5th September, 2022 the said application in Case No. 1252/N/2022 came to be rejected on the premise that the charge sheet was yet not filed and the documents, interim custody of which was sought, were necessary to facilitate further investigation and also formed part of the evidence. At that time, the learned counsel for the applicant submitted that the applicant/accused, from whose possession the said documents were seized, was given an opportunity of hearing. However, while passing the impugned order no opportunity of hearing was given.

4. Initially the learned counsel for respondent No. 2 made an endeavour to controvert the submissions on behalf of the applicant. It was submitted that the applicant had appeared before the learned Magistrate when the order was being passed.

5. I have perused the impugned order. Learned Magistrate has inter alia recorded that at about 1.30 pm when the order was already passed, the applicant appeared and submitted that he wished to resist the application. Thus, the learned Magistrate passed further order. It seems that the respondent No. 2 herein has submitted an undertaking that he will not misuse the custody of the said document for creating third party interest in the subject property.

6. The aforesaid observations of the learned Magistrate make it

clear that the applicant was not heard when the impugned order was initially passed. Since, the applicant was provided an opportunity of hearing while passing order dated 5th September, 2022, it would have been in the fitness of things to provide an opportunity to the applicant when the prayer for interim custody of the documents was renewed.

7. In view of above, without delving into the merits of the matter, it may be expedient to remit the matter back to the learned Magistrate for a fresh decision in Notice Case No. 1620/N/2023 after providing an opportunity of hearing to the applicant.

Hence, the following order.

ORDER

1] Application stands allowed.

2] The impugned order dated 4th November, 2023 passed in Notice Case No. 1620/N/2023 stands quashed and set aside.

3] Notice Case No. 1620/N/2023 is restored to the file of learned Metropolitan Magistrate, 66th Court, Andheri, Mumbai.

4] The learned Magistrate is requested to decide the application as expeditiously as possible after providing an opportunity of hearing to the parties.

5] It is hereby made clear that this Court has not delved into the merits of the matter.

6] The parties shall appear before the learned Magistrate on 26th February, 2024.

Application disposed.

(N. J. JAMADAR, J.)