



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

Criminal Writ Petition No.432/2024

Prajwal s/o Vittalrao Aambhore,
Aged about 26 years, Occ.-Business,
R/o. At Ajanni, Umred Road, Kalamna,
Distt. Nagpur.

.... Petitioner.

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police Station Lakhandur, Distt. Bhandara.

2. The Tahsildar, Tahsil Officer, Lakhandur, Distt. Bhandara.

3. The Revenue Inspector, Tahsil Office, Lakhandur,
Distt. Bhandara.

.... Respondents.

Mr. Raju Kadu, Advocate for the petitioner.
Mr. M.K. Pathan, APP for State.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ
Date : 21-06-2024.

J u d g m e n t (Per Smt. Vibha Kankanwadi, J.)

. The present petition has been filed for issuing writ of Mandamus to the respondents to comply with the order dated 09-11-2023 passed by learned Judicial Magistrate First Class, Lakhandur ("JMFC", for short) in Criminal Misc Criminal Application No.120/2023 which had ordered release of vehicle "Tippar" bearing registration no.MH 40 CS 7339 and handed it over to the petitioner. The petitioner also seeks setting aside of order dated 12-02-2024 passed in MJC No.28/2023 passed by learned Civil Judge, Junior Division and JMFC, Lakhandur

imposing costs of Rs. 5000/- to be paid to each of the respondents by the petitioner.

2. Heard learned Advocate appearing for the petitioner and learned Additional Public Prosecutor for the respondent.

3. It is not in dispute that the petitioner is the owner of said vehicle bearing registration no. MH 40 CS 7339 and it was seized in Crime No.318/2023 for the offence punishable under sections 379 and 109 of the Indian Penal Code ("IPC", for short) against the petitioner and co-accused. The petitioner had filed an application under Section 457 of the Code of Criminal Procedure ("Cr.P.C.", for short) for returning the property i.e. the "Tippar" after taking say of the Investigating Officer and hearing both the sides, the learned Magistrate had allowed the said application on 09-11-2023 upon executing indemnity bond of Rs. 15 lakhs.

4. The petitioner has come with a case that he approached with *hamdast* to the office of respondent no.1 for the implementation of order dated 09-11-2023 passed by learned Magistrate. However, he found that respondent no.1 was very rude and refused to release the vehicle after accepting the copy of the order and *Supratnama*. It is stated that he directed the staff not to release the vehicle in spite of the order of the trial Court. The petitioner then made application to the trial Court for issuing

show cause notice against the respondents bearing Misc Criminal Application No.121/2023. Notice was issued, in which respondent no.2 was appeared and filed reply. It was then contended that the custody of the vehicle was given to the petitioner. However, it is contention of the petitioner that he has not received the custody. However, before the trial Court copy of panchanama was produced in respect of seizure executed by Talathi, Lakhandur regarding taking the custody of the "Tippar". The said "Tippar" is still in the custody of the respondent no.1. The learned Magistrate erred in imposing costs of Rs. 5000/- to each of the respondents when he was seeking permission to withdraw the application and therefore both the orders are challenged in this petition.

5. Learned Advocate appearing for the petitioner has taken us through the documents which are attached with the petition and submitted that in spite of the order passed in favour of the petitioner by learned JMFC to handover his "Tippar", the "Tippar" has not been handed over. It is further contended that the Revenue Officer has now started proceedings and imposed fine/penalty under the Maharashtra Land Revenue Code ("MLR Code", for short). The petitioner never received any notice regarding the same. On the contrary, then, when those facts were put before the learned Magistrate, the petitioner sought permission to withdraw the petition thereby the petitioner was not restricting his remedy to approach this Court. However,

unnecessarily costs have been imposed upon the petitioner. When the Hon'ble Supreme Court directs that vehicle should not be kept in the Police Station for long period and the application under Section 457 of the Cr.P.C. should be decided at the earliest point of time. In the present case, in spite of the order in favour of the petitioner he has not yet got the possession, and therefore the said order by learned JMFC deserves to be set aside and the applicant should be allowed to take back his "Tippar".

6. *Per contra*, learned APP has produced on record the copies of proceedings before the Tahsildar. He says that the petitioner and the co-accused were found transporting sand illegally from the said "Tippar" and therefore offence under Sections 379 and 109 of the IPC came to be registered. Though the order was passed by learned Magistrate under Section 457 of the Cr.P.C., yet prior to that upon receipt of the information regarding the facts of that case show cause notices came to be issued to the petitioner on 29-11-2023 and 07-12-2023. Copy has been served in respect of the notice dated 11-08-2023 on the WhatsApp number of the applicant. Photocopy of WhatsApp message has been produced on record. It is stated that twice opportunity was given to the petitioner to submit his say in respect of proposed seizure under Section 48(7) of the MLR Code. No such reply was given and therefore order came to be passed by Sub-Divisional Officer imposing penalty of Rs. 2 Lakhs to be paid with the Government. When intimation about the

imposition of said penalty was given to the applicant he has not come forward. The Investigating Officer had no knowledge about the proceedings, those were undertaken in respect of the vehicle owned by the petitioner. There was no question of contempt by the Investigating Officer in not releasing the vehicle. In fact, after the *Supratnama* was handed over to the petitioner; the Investigating Officer had handed over the custody of the vehicle to the petitioner, but at the same time the Tahsildar seized the said vehicle under Section 48(7) of the MLR Code. None of the Authority had committed contempt of the order passed under Section 457 of the Cr.P.C. and therefore when the petitioner proposed to withdraw the application, learned JMFC has imposed the costs.

7. Learned APP relies on the decision of Single Judge of this Court Bench at Aurangabad (Smt. Vibha Kankanwadi, J., as a Member) in Criminal Application No.1880/2020 (Gajanan Dhondiba Sontakke vs State of Maharashtra), wherein this Court has observed that simultaneous proceedings i.e. under the IPC and MLR Code are maintainable.

8. It is to be noted that the case has peculiar facts, the FIR was only in respect of Sections 379 and 109 of the IPC. Any section under the MLR Code was not invoked, and therefore it appears that the learned JMFC has exercised her power under Section 457 of the Cr.P.C. and directed release of the vehicle.

The said order came to be passed on 09-11-2023. As per the seizure panchanama that has been drawn by Talathi, the said vehicle came to be seized from Police Station on 17-11-2023. The Supratnama is also of the same date which was given by the petitioner to the Investigating Officer. We are unable to get the exact timings, but certainly those acts over have been one or the other on the same date. It is specifically mentioned that the person from whose custody the vehicle is seized, has refused to sign. Now the petitioner may be interested in denying the said endorsement on the seizure panchanama. But, the fact remains is that there is such endorsement in presence of two panchas. This shows that from 09-11-2023 till 17-11-2023 there was no attempt by the petitioner to get the custody of the vehicle.

9. It appears from the record that the Investigating Officer had handed over the vehicle to the petitioner in view of the order dated 09-11-2023 and for that purpose only the *Supratnama* was executed by the petitioner and handed it over to the Investigating Officer. Thereafter, if the Tahsildar undertakes and complete the procedure under Section 48(7)(8) of the MLR Code then certainly the Investigating Officer is not responsible or in other words it can be said that, there was no question of disobedience of the order passed by the learned JMFC by the Investigating Officer.

10. Now we may not go into the details as to whether the applicant was served in respect of notice dated 29-11-2023 or 07-12-2023 as alternate remedy by way of appeal has been provided under Section 48 of the MLR Code. Here the concerned Authority under the MLR Code has already passed an order and therefore when the statute is giving right of appeal that should be exercised, it cannot be then the subject matter of the writ jurisdiction of this Court.

11. Hon'ble Supreme Court in *Sunderbhai Ambalal Desai and others vs State of Gajarat*, reported in *AIR (2002) 10 SCC 382* has reiterated that vehicle should not be kept idle in the premises of Police Station, an arrangement is required to be made till the remedy of appeal is exhausted by the petitioner. A balance will have to be struck now when already the order under Section 457 of the Cr.P.C. is in favour of the petitioner.

12. It appears that the said Misc. Criminal Application No.121/2023 was filed against the Police Officer or officers of Tasildar by the petitioner in view of the fact that though the order was in favour of the applicants still he was not getting the custody of the vehicle. Later on when the applicant sought permission to withdraw as it appears that he was under some mistaken facts as to exactly who had taken the action. He sought withdrawal and under the said circumstance, learned JMFC ought not to have

imposed costs. In the impugned order passed by learned JMFC, Lakhandur on 12-02-2024 it is stated that, the application was not sure to proceed before which forum. It can be presumed that the petitioner was depending on the legal advise that was given by his Advocate. When he realized the mistake, he sought withdrawal. It is surprising to note the observation of the learned Magistrate that the petitioner's Advocate had not made any argument on the point as to how contempt petition is maintainable before the High Court as per the provisions of Contempt of Courts Act. Learned JMFC was not supposed to decide the said point. Therefore, we find imposition of costs under the said order is too harsh.

13. For the above said reasons, we proceed to pass the following order :-

- (a) Writ Petition stands partly allowed.
- (b) The order dated 12-02-2024 passed in MJC No.28/2023 passed by learned Civil Judge Junior Division and JMFC, Lakhandur, imposing costs of Rs.5000/- to be paid by the petitioner to each of the respondents therein, stands quashed and set aside.
- (c) We clarify that the rest of the order is not disturbed.

(d) The respondent no.2 is directed to handover the custody of "Tippar" bearing registration No MH 40 CS 7339 be handed over in the custody of petitioner upon deposit of amount of Rs. one lakh by the petitioner with the revenue Authorities within a period of three weeks from today.

(e) Such deposit with the revenue Authorities by the petitioner would be without prejudice to the rights and contentions of either parties and it shall not be taken as acceptance of commission of crime by the applicant.

(f) This order to remain in force for a period of three weeks from today. In case the appeal is filed as prescribed under the provisions of the MLR Code before the appropriate Authority by the petitioner, and thereafter it would be subject to the orders passed by the concerned appellate Authority.

(g) We clarify that, if the petitioner fails to file the appeal, then the revenue Authority is at liberty to take further recourse as per the provisions of the MLR Code.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)