

(2014) 07 BOM CK 0327

In the Bombay High Court

Case No : Criminal Writ Petition No. 263 of 2004

Jai Padmavati Automobile Finance

APPELLANT

Vs

The Police Inspector and Others

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Citation : (2015) ALLMR(Cri) 976 : (2015) 4 BomCR(Cri) 719

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : Vijay Sharma, Advocates for the Appellant; S.G. Nandedkar, APP, Advocates for the Respondent

Judgement

S.S. Shinde, J.—Learned Counsel appearing for the applicant/petitioner has tendered across the Bar Criminal Application No. 4107/2014, seeking restoration of the criminal writ petition as against the Respondent No. 4, which stood dismissed in default, and issuance of fresh notice to Respondent No. 4. This prayer is made belatedly, i.e. after seven years of dismissal of the writ petition as against the Respondent No. 4. Therefore, we reject the said prayer of the applicant/petitioner on the ground of inordinate delay. Therefore, Criminal Application No. 4107 of 2014 stands rejected. In this criminal writ petition, the petitioner makes two-fold prayers, firstly, seeking direction to Respondent No. 4 to restore custody/possession of the subject vehicle bearing registration No. MH16-B-1956 to the petitioner and secondly, directions to Respondent Nos. 2 and 3 to fix responsibility in respect of the illegal and criminal acts and to take appropriate action including penal action against Respondent No. 1.

2. Learned Counsel appearing for the petitioner, submits that Respondent No. 1, without there being registration of FIR, investigated in the matter and taken over possession of the subject vehicle from custody of the petitioner. It is submitted that such course was not open or permissible in law to the Respondent No. 1. If Respondent No. 1 was convinced about genuineness of the complaint lodged by Respondent No. 5, in that case, after registering the FIR, subsequent steps ought

to have been taken.

Learned Counsel invited our attention to the affidavit in reply filed by Respondent No. 1 and submits that in para 5 of the said affidavit in reply, Respondent No. 1 has admitted that no offence was registered on the complaint filed by Respondent No. 5. Therefore, according to learned Counsel appearing for the petitioner, this petition deserves to be allowed.

3. On the other hand, learned Counsel appearing for Respondent No. 5, submits that in so far as prayer clause (A) of the petition is concerned, the said prayer cannot be granted by this court since it relates to restoring the custody/possession of the subject vehicle to the petitioner.

4. Learned APP submit that since already this petition has been dismissed as against Respondent No. 4 and, therefore, the petition in its entirety, deserves to be dismissed. He invited our attention to the affidavit in reply filed by Respondent No. 1 and submits that the petitioner has no right to take custody/possession of the subject vehicle upon default made by the purchaser and without issuing a notice to the defaulter/purchaser of the vehicle.

5. We have heard the learned Counsel for the petitioner; learned APP for State and learned counsel appearing for Respondent No. 5. So far as prayer clause (A) of the petition is concerned, in our considered opinion, grant of such prayer would lead to disputed questions of facts, which would fall outside the purview of the writ jurisdiction. Therefore, we decline to entertain the said prayer.

6. It is an admitted position that, without registering the crime/FIR, the Respondent No. 1 proceeded ahead and caused investigation. It further prima facie appears that custody of the subject vehicle was taken from the petitioner and the same was handed over to Respondent No. 5. There is no explanation in what capacity and under which provision of law the concerned police officer did the said activity. In our view, Respondent No. 1 should not have proceeded with the investigation, without there being registration of the Crime/FIR. We, therefore, direct Respondent Nos. 2 and 3 to initiate an inquiry against Respondent No. 1, who was In-charge of police station, Neknoor at the relevant time. Such inquiry to be initiated within one month from today and to be concluded as expeditiously as possible and preferably within a period of four months from today. In the inquiry, the Respondent No. 1 shall be given an opportunity of being heard and to put-forth his contentions. Needless to observe that, Respondent Nos. 2 and 3 will adhere to the principles of natural justice. After completion of the inquiry, depending upon the report of inquiry, it will be open for Respondent Nos. 2 and 3 to take appropriate action against the concerned police officer, in accordance with law. We do not express any opinion on merits of the said inquiry. It is needless to observe that the report of inquiry should be communicated to the Respondent No. 1 including the office of APR

7. The parties shall be at liberty to take appropriate remedy, as permissible under the law, depending upon the inquiry report of Respondent No. 2 and 3. The Writ

Petition is disposed of. Rule made absolute on the aforesaid terms.