

(1996) 07 BOM CK 0039

In the Bombay High Court

Case No : Criminal Revision Application No. 4 of 1995

John Anthony D"costa

APPELLANT

Vs

State (P. I. Margao Police Station) and another

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457

Citation : (1997) BomCR(Cri) 212 : (1997) CriLJ 1418

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : N. Sardessai, for the Appellant; G.U. Bhobe, Public Prosecutor, S. G. Dessai, for the Respondent

Judgement

1. The present revision application arises from the order dated 25th July 1994 passed in Criminal Revision Application No. 71 of 1993 by the Sessions Judge, South Goa, Margao whereby the order passed by the Judicial Magistrate, First Class, Margao in Criminal Miscellaneous Application No. 71 of 1993 on 2nd December 1993 was set aside and the car in question was directed to continue to be in possession of the respondent No. 2 herein on the indemnity bond Exhibit 5 of Rs. 2 lakhs till the petitioner herein is able to establish his right to the car by due process of law.
2. Various contentions are raised on both sides. However, a brief narration of the facts in the matter will suffice to dispose of this matter finally. I, therefore, with the consent of the parties, proceed to decide this matter finally.
3. The case of the petitioner is that the possession of the car was taken by the police on 23rd May 1993 from the custody of the petitioner when the car was parked by him at Margao. It is the case of the respondent No. 2 that she is in possession of the said car pursuant to the document dated 6th December 1991 and continued to be in possession of the car till 23rd May 1993 when it was forcibly removed by the police from a place near her house where she had parked the same. The execution of the said document is not disputed by the

petitioner though a different explanation is sought to be given by him. However, as rightly pointed out by the learned Sessions Judge, the document had to be accepted prima facie as it is at this stage. The contention of the petitioner was that the car was never delivered under the said document. Moreover it is pertinent to note that on 15th February 1993, the petitioner himself had reported to the police that the said car had been forcibly taken away by the respondent No. 2 and that the possession of the said car should be restored to him. It is the case of respondent No. 2 that police had made inquiry and the vehicle continued to be in her custody. On 23rd May 1993 the records show that the vehicle was attached by the police on complaint made by the Margo Urban Co-operative Bank on account of failure on the part of the petitioner herein to pay the installment of Rs. 40,000/- in respect of the loan amount for which she car was purchased. The learned Sessions Judge on going through the records had arrived at a finding that in the facts and circumstances it sounds to reason that the car was parked near the house of the respondent No. 2 and as contended by her the same was attached by the police from there from her custody. I do not find any infirmity in the said finding of the learned Sessions Judge considering the facts and circumstances of the case.

4. Shri Sardesai, counsel appearing for the petitioner, has contended that since the application has been filed under S. 457, it was the duty of the learned Sessions Judge not only to see from whose custody the vehicle was attached but also to consider the ownership aspect of the vehicle. In support of this submission he relied upon the case of *Moreshwar Dinanath Sawe v. Smt. Zubaidabi w/o Jaji Haroon*, reported in 1979 Bom CR 238. He also further submitted that there was no occasion for the Magistrate as well as the learned Sessions Judge to invoke the powers under S. 457 in view of the fact that the investigation had already been closed and there was no case pending before the trial Court either.

5. Shri Dessai, counsel, appearing for the respondent No. 2, while seriously disputing the submissions made by the learned counsel for the petitioner in relating to Section 457, submitted that the Magistrate while exercising the power u/s 457 has to consider as to who is entitled for possession and in doing so, he need not necessarily deliver the car to the person in whose name it stands. He sought support for his contention by relying on the case of *Virendrakumar J. Handa Vs. Dilawarkhan Alij Khan and others*, . He further submitted that the impugned order is not revisable in view of the fact that it is an interlocutory order and such order cannot be subject matter of scrutiny in revision application. He placed reliance in the matter of *Amar Nath and Others Vs. State of Haryana and Another*, .

6. Indeed this Court in the matter of *Virendrakumar J. Handa Vs. Dilawarkhan Alij Khan and others*, relying on a decision of a Division Bench in the matter of *Kishan Pandurang Kagde v. Baldev Singh Gian Singh* reported in 1977 Mh LJ 656 held that while exercising powers u/s 457, Cr.P.C. there is no universal principle

that a vehicle must necessarily be handed over to the custody of the person in whose name the registration stands. Undisputably in the instant case on 15th Feb. 1993 the petitioner's report to the police was to the effect that the car was forcibly taken away by the respondent No. 2 and thereupon there was a police inquiry and it was found that the vehicle was in lawful custody of the respondent No. 2. Added to this, the vehicle was attached by the police, rightly or wrongly, from a place near the residence of the respondent No. 2. Undisputedly the petitioner resides at Shiroda, a distance far away from the place where the car was attached. In these set of facts I do not find any infirmity in the order passed by the learned Sessions Judge whereby the learned Sessions Judge had allowed the respondent No. 2 to continue to be in possession of the car till the petitioner is able to establish his right to the car by due process of law. Viewed from this angle, I need not go into the other points raised by the parties.

7. In the facts and circumstances of the case, I pass the following order :

The criminal revision application is dismissed. However, there shall be no order as to costs.

8. Application dismissed.