

(2019) 01 BOM CK 0119

In the Bombay High Court

Case No : Criminal Writ Petition No. 1410 Of 2018

Santosh

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 451, 457
Indian Penal Code, 1860 — Section 34, 420, 468, 471

Citation : (2019) AII MR(Cri) 746

Hon'ble Judges : Mangesh S. Patil, J

Bench : Single Bench

Advocate : D.S. Bharuka, S.D. Ghayal

Final Decision : Dismissed

Judgement

Mangesh S. Patil, J.

1. Heard. Rule. Rule is made returnable forthwith. The learned APP waives service. At the request of both the sides, the matter is heard finally at the stage of admission.

2. The petitioner had filed an application under Section 457 of the Cr.P.C. seeking release of a vehicle being a truck bearing No.MH-20-EG-2049 seized by police in connection with Crime No.100 of 2018, registered with M.I.D.C. CIDCO Police Station Aurangabad for the offences punishable under Section 420, 468, 471 read with Section 34 of the IPC.

3. The learned advocate for the petitioner submits that he had taken that vehicle on rent from its owner Mr. Alim Patel under an agreement dated 09.10.2017. The petitioner is not at all related to the crime in respect of which the vehicle has been seized. It is a vehicle which is meant for day-to-day use and even the Supreme Court in case of Sunderbhai Ambalal Desai Vs. State of Gujrat ; 2003 (1) G.L.H. 307 and General Insurance Council Vs. State of Andhra Pradesh, LEX (SC) 2010 4 has laid down various guidelines and reasons as to why the vehicles

should not be allowed to remain idle and the Magistrate should release them to the owners. Ignoring the principles laid down by the Supreme Court the Magistrate had rejected the application and the order has been confirmed by the Revisional Court by dismissing the Revision by the judgment and order impugned in the Writ Petition. Therefore, both the orders be quashed and set aside and the vehicle may be directed to be released in favour of the Petitioner.

4. The learned APP submits that the vehicle is a stolen property. In fact there is a forensic report certifying that the chassis number of the vehicle has been super-imposed by a forged number. The person from whom the petitioner is stated to have received the vehicle under an agreement is an accused in Crime No.100 of 2018 for forging the chassis number of the vehicle. He could not have legally agreed to rent it out to the petitioner. The investigation in respect of the real owner of the truck is still under process. As many as 18 trucks were seized from accused Alim and the other accused. It is under these circumstances, when the petitioner is not the owner of the vehicle and has not received the vehicle under a legal agreement and when the person who had handed over it to him himself is accused of an offence as mentioned herein above, the vehicle cannot be released in his favour.

5. I have carefully gone through the papers of the investigation in respect of Crime No.100 of 2018. Prima facie, the said crime has been registered with the allegations that the accused therein had stolen number of vehicles including the present truck and have forged the chassis number by super imposing it. At this juncture, as far as ownership of the vehicle is concerned the investigation is still going on. Admittedly, the petitioner is not the owner of the vehicle. He had merely received it on rent from the accused Alim Patel under an agreement. However, unless it can be prima facie demonstrated that said accused Alim Patel was the rightful owner / possessor of the vehicle which he could have validly and legally handed over to the petitioner, the latter cannot be said to be the rightful claimant to whom the property can be delivered.

6. With utmost respect, there cannot be two opinion in respect of the principles laid down by the Supreme Court in the afore mentioned decisions. A validly registered vehicle cannot be allowed to remain idle and in an appropriate case the Magistrates are supposed to invoke the powers under Section 451 and 457 directing release of the vehicles. However, it must be borne-in-mind that the fact situation in the matter in hand is completely different. The Supreme Court has inter alia laid down that the owner of the vehicle should not suffer because of the vehicle remaining idle. Here the question is about the ownership itself. The person from whom the petitioner had received the vehicle is accused of forging the chassis number meaning thereby that even his title to the vehicle is under a serious cloud and consequently at this juncture it cannot be said that the petitioner had legally received the vehicle, so that it can be returned for being plied on the road.

7. In this regard, it is also equally important to refer to the provisions of the

Motor Vehicles Act, 1988 which requires every vehicle to be insured. When in the matter in hand, it is alleged that the chassis number of the vehicle is forged one, allowing such a vehicle to be plied on the road without there being any valid and legally enforceable insurance agreement would be not only illegal but hazardous. Right in the teeth of the allegations that the chassis number was forged by the accused Alim Patel, there is every likelihood of the Insurance Company, if at all the vehicle is insured with any such insurance company, of refusing to indemnify the owner or the person with whom it has entered into an agreement, to pay compensation to a third party. This was not a fact situation obtaining before the Supreme Court and therefore in my considered view, the petitioner is not entitled to claim any benefit from those decisions.

8. The upshot of the above discussion is to the effect that firstly, the petitioner is not the owner. Secondly, though he has received the vehicle under some agreement the person from whom he has received it is alleged to have forged the chassis number of the vehicle and the investigation to trace out the owner is in progress. There is a serious issue regarding the vehicle being validly insured with some insurance company which would be liable to indemnify the insurance. Though not for these reasons, the orders passed by the learned Magistrate as well as the Revisional Court do not call for any interference.

9. The Writ Petition is dismissed. The rule is discharged.