

(2020) 07 BOM CK 0021

In the Bombay High Court

Case No : Criminal Writ Petition No. 267 Of 2020

Swapnil S/O Ganesh Gaikwad

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 24-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 307, 332, 353
Code Of Criminal Procedure, 1973 — Section 451, 457
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 07 BOM CK 0021

Hon'ble Judges : V.L. Achliya, J

Bench : Single Bench

Advocate : Shaikh Rameez Raja, Sk.Maqsood, S.Y.Mahajan

Final Decision : Allowed

Judgement

V.L.Achliya, J

1. Rule. Rule returnable forthwith. With the consent of the learned counsel for the petitioner and learned APP for the respondent-State, the petition is

heard finally at the stage of admission.

2] By this Petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged the impugned order dated 06.01.2020 passed in

Criminal M.A.No. 13/2020 by the learned Judicial Magistrate First Class, Gangapur and confirmed in Criminal Revision Application No. 1/2020 by the

learned Additional Sessions Judge, Vaijapur, District Aurangabad. By the impugned order, the Courts below have refused to entertain the application

seeking interim custody of the vehicle owned by the petitioner. The petitioner has claimed the relief reads as under:

B. The order dated 24.01.2020 of the Honâ??ble Additional Session court

Vaijapur Dist-Aurangabad in Cri Rev no-1/2020 and order dated

06.01.2020 passed by the JMFC court Gangapur in Cri MA no-13/2020 may kindly be quashed and set aside.

C. That, the petitioner Vehicle i.e. Swift VDI IV, bearing registration no- MH-12-KT-9786 Chasis number MA3FHEB1S00556793 and engine

number D13A2259157 may kindly be order to released which is seized by the Gangapur Police Authority in crime number 0409/2019.

3] Before adverting to deal with the submissions advanced, it is useful to refer few facts leading to filing of this Petition. The petitioner herein came to

be arrested and released in connection with the offences under Section 307, 353, 332 of the Indian Penal Code, registered vide Crime No.0409/2019

with Police Station Gangapur, District Aurangabad. In sum and substance the prosecution has alleged that on 19.10.2019 when the informant

accompanied with one Police Constable went in search of the petitioner to serve non-bailable warrant in connection with Sessions Case No.26 of

2014, the petitioner refused to allow them to execute the warrant. The petitioner was sitting in a car bearing registration No. MH-12-KT-9788. When

the Police Constable accompanied with the informant tried to take the petitioner with his car to the Police Station, the petitioner attempted to run over

the informant by said car. He has also attempted to run over the Police Constable accompanied with the informant. The petitioner was arrested on

19.10.2019 in connection with the aforesaid offences and car in question was seized as same alleged to be used in commission of said offences.

4] After release on bail, the petitioner moved an application seeking grant of interim custody of the said car for the reasons set out in detail in the application.

5] The respondent opposed the application with contention that the vehicle seized required to be produced in evidence and if same is given in custody of petitioner, he may sale the vehicle or alter its condition.

6] The application moved by the petitioner seeking interim custody came to be rejected vide order dated 06.01.2020. The petitioner preferred revision against said order in the Court of Additional Sessions Judge, Vaijapur. By order dated 24th January, 2102 passed in Criminal Revision Application No.

01 of 2020, the learned Additional Sessions Judge, Vijapur, rejected the petition and confirmed the order passed by the learned Judicial Magistrate

First Class, Gangapur. Being aggrieved, the petitionerâaccused has preferred this Petition seeking aforesaid relief.

7] In brief, it is the contention of the learned counsel for the petitioner that the orders passed are per se illegal and not sustainable in law. It is

submitted that the orders passed are not only against the settled principles of law but same are also glaring example of non exercise of jurisdiction

vested with the Courts below. It is submitted that the vehicle seized is not property liable to be confiscated on conclusion of trial. The said vehicle has

been seized as an evidence. It is submitted that it will take long time to proceed with the trial. The car in question is kept in open premises outside the

police station. It is lying in idle condition from the month of October, 2019. Due to non use the vehicle is losing its utility and value day by day. By the

passage of time it will result into scrap. The petitioner is ready to take interim custody of the car on such terms and conditions as may be imposed by

the Court in event of release of car on supratnama. In support of submissions advanced, learned counsel has referred and relied upon the broad

guidelines laid down by the Apex Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in 2002 [10] SCC 283.

8] On the other hand, learned APP supported the orders passed by the courts below. It is submitted that the petitioner is charged with serious offence

as to attempt to cause murder of the informantâPolice Officer by using car. The petitioner is having track record of indulging into offences of similar

in nature. If the vehicle is released on bail, there is every likelihood that the petitioner may use the same in commission of offences of similar in nature.

There is every possibility that petitioner may sell, dispose of or alter condition of the vehicle if released on interim custody or to destroy the evidence.

9] I have carefully considered the submissions advanced in the light of overall facts of the case and orders under challenge, I am of the considered

view that, the impugned orders are not sustainable in law. Without any justifiable reasons, the courts below have refused to exercise jurisdiction vested

with them. The seizure of vehicle in a case triable by the Court of Session not operate as a bar for the Judicial Magistrate to exercise powers vested

upon him under Section 457 of the Criminal Procedure Code. So also the order passed by the learned Additional Sessions Judge not only cryptic but

reflect total non application of mind. While passing impugned orders, Courts below completely ignored to consider the guidelines laid down by the

Apex Court in the matter of disposal of property.

10] Section 457 of the Code of Criminal Procedure deals with the powers of the Magistrate to pass orders as to the disposal of the property seized

during the course of inquiry or trial but not produced before the Court. Section 457 reads as under:

457. Procedure by police upon seizure of property. - (1) Whenever the seizure of property by any police officer is reported to a Magistrate under

the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order

as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such

person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks

fit and if such person is unknown, the Magistrate may detain it and shall, in such case, use a proclamation specifying the articles of which such

property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the

date of such proclamation.

11] Plain reading of Section 457 of the Code of Criminal Procedure spell out that the Magistrate is vested with the powers to pass orders of disposal

of the property seized] during the inquiry or trial by the police but not produced in court to any person entitled to possession of such property including

grant of interim custody of such property. The orders as contemplated under Section 457 are alone to be exercised by the Judicial Magistrate. In that

view, the order passed by the learned Magistrate to refuse to exercise jurisdiction vested under Section 457 of the Criminal Procedure Code for the

reason the property has been seized in an offence triable by Sessions Court legally not sustainable in law. The learned Additional Sessions Judge has

dismissed the revision petition and confirmed the order passed by the learned Magistrate without taking any pains to even read Section 457 of the

Criminal Procedure Code. In that view, the courts below have acted very casually in passing the orders.

12] In the case of Sunderbhai Ambalal Desai Vs. State of Gujarat reported in

2002 [10] SCC 28,3 the Honâ??ble Apex Court has considered the situation that has emerged due to reluctance or non exercise of powers vested with subordinate courts under Sections 451 and 457 of the Criminal Procedure Code resulting into huge property lying at police station as well as courts. To overcome such situation the Honâ??ble Apex Court has issued detail guidelines as to various types of properties which are seized and lying at police station or courts occupying sufficient space as well as subject to natural process of decay. In respect of vehicle seized during inquiry or trial and lying in police station, the Apex Court has laid the course to be followed, as under:

â??15. Learned Senior Counsel Mr Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a

period of six months from the date of production of the said vehicle

before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and

detailed panchanama should be prepared.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate

action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police

station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the

High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.â??

13] Similarly, in the case of General Insurance Council and Ors. Vs. State of Andhra Pradesh and Ors. reported in [2010] 6 SCC 76 8in para No.14,

the Apex Court has observed as under:

â??14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy

substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good

maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a

matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles

become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State

Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the

activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police

of the division / Commissioner of Police concerned of the cities / Superintendent of Police concerned of the district concerned.â??

14] Thus, the impugned orders passed not only amounts to wrongful refusal of exercise of jurisdiction vested with the courts but also amounts to

overlooking the directives issued by the Honâ??ble Apex Court in the matter of release of vehicles seized during inquiry or trial.

15] There is no dispute that the petitioner is a registered owner of vehicle seized. The vehicle in question has been seized as an evidence to be relied in support of the prosecution case. It is not the case of prosecution that the vehicle liable to be confiscated on conclusion of trial. The vehicle is lying in open premises from the month of October, 2019. Day by day it is losing its utility and value. It is occupying substantial open space of the police station. Since it is kept in open and prone to natural decay due to weather condition it will lose its value as well as utility by the passage of time. It is a matter of common knowledge that if vehicle is not used for a long period, it becomes unworthy of being driven on road. It will take long time to proceed with the trial against the petitioner. In that view, it is not desirable to keep the vehicle in idle condition at police station. The release of the vehicle on supratnama i.e. execution of bond with certain condition would meet the apprehension of the prosecution as to sale and misuse of the vehicle at the instance of the petitioner. In that view, the orders passed by the Courts below deserves to be set aside and the application seeking interim custody moved by the petitioner deserves to be allowed on certain conditions.

16] In the result, the petition is allowed in terms of prayer clause-B. The impugned orders passed by the Courts below are set aside. The application moved by the petitioner seeking interim custody filed as Criminal Misc. Application No.13/2020 is allowed. The interim custody of the Swift Car bearing registration No. MH-12-KT-9786 be handed over to the petitioner on furnishing bond in the sum of Rs.5 lakh with an undertaking that the petitioner shall not sell, transfer or create third party interest in respect of the said vehicle and produced the same as and when directed by the courts.

On failure to produce vehicle, the petitioner shall deposit Rs.5 Lakh in court. The petitioner is directed to file undertaking to effect that he shall not raise any dispute during trial as to the identity of the vehicle seized and referred in panchanama. The photographs of the vehicle be kept on record.

17] Rule made absolute in above terms.