

(2014) 01 BOM CK 0126

In the Bombay High Court

Case No : Criminal Writ Petition No. 876 of 2013

Vishnu

APPELLANT

Vs

The State of Maharashtra and HDFC Bank Ltd.

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457
Penal Code, 1860 (IPC) — Section 120(B) 323 34 406 420

Citation : (2014) 2 BomCR(Cri) 192

Hon'ble Judges : Abhay M. Thipsay, J

Bench : Single Bench

Advocate : Abhaysinh K. Bhosale, for the Appellant; P.P. More, Additional Public Prosecutor for Respondent No. 1 and Mr. U.N. Shete, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Thipsay, J.—Heard Mr. A.K. Bhosale, the learned Counsel for the petitioner. Heard Mr. P.P. More, the learned Additional Public Prosecutor, for the respondent no. 1. Heard Mr. U.N. Shete, the learned Counsel for the respondent no. 2. Rule. By consent, Rule made returnable forthwith. By consent, heard finally.

2. The petitioner is the accused in Crime No. I-94/2011, registered with Mukundwadi Police Station, Aurangabad. The said case relates to offences punishable under Sections 420 of the IPC, 468 of the IPC, 471 of the IPC, 120(B) of the IPC, 406 of the IPC, 323 of the IPC, 506 of the IPC, read with Section 34 of the IPC. In the course of investigation, in all, twelve vehicles belonging to the petitioner came to be seized. The petitioner made an application before the Judicial Magistrate (First Class), Aurangabad, praying for the return of the said vehicles to him. The application was made in view of the provisions of Section 457 of the Code of Criminal Procedure, 1973 [For short, "the Code"], and was treated, as such, by the learned Magistrate, who, after hearing the investigating

agency and the applicant, passed an order directing the vehicles to be returned to the petitioner, on executing a bond with certain conditions.

The order passed by the Magistrate was challenged by the HDFC Bank Ltd. [For short, "the Bank"], the respondent no. 2 herein, by filing an application for revision. It is because, out of the 12 vehicles ordered to be handed over to the petitioner by the learned Magistrate, the Bank was having a charge on 8 vehicles. The Bank had advanced money to the petitioner for purchasing the said vehicles and claimed that, the petitioner was liable to repay the loan in instalments as per the terms agreed between the petitioner and the Bank. The learned Additional Sessions Judge maintained the order of the Magistrate, but directed the petitioner (Respondent no. 2 before him) to pay a certain amount as and by way of instalments to the Bank. Apparently, the petitioner failed to comply with the said directions and, therefore, in the revision application which was already disposed of, further directions came to be given by the learned Additional Sessions Judge, on an application made by the Bank. The direction was to the effect that the petitioner (Respondent no. 2 before the Sessions Court) should remain present before the court with the vehicles in question on a given date.

Being aggrieved by the said order, the petitioner has approached this Court, invoking its constitutional jurisdiction and praying that the order dated 21-9-2013, passed by the Court of Sessions, directing him to remain present before that court, along with the vehicles in question, be quashed and set aside, and that, any other order or relief, as may be fit and proper in the facts and circumstances of the case, be granted.

3. Mr. U.N. Shete, the learned Counsel for the respondent no. 2-Bank-did not dispute that the crimes registered against the petitioner, in the course of investigation of which the vehicles in question came to be seized, were unconnected with the transaction between the petitioner and the Bank. He did not dispute that the vehicles in question came to be seized in connection with the investigation of a case in which the Bank was not involved in any manner. His only contention is that, "since the petitioner had taken these vehicles after taking loan from the Bank, and since he was bound to repay the loan, as agreed upon between the petitioner and the Bank, and since he had failed to pay the instalments as agreed upon, the Bank was entitled to have custody of the said vehicles". He also submitted that, when the revision application was decided, a direction was given by the revisional court to the petitioner, to pay to the Bank, a certain amount by a certain date, and that, the order of the Magistrate was maintained by the revisional court in view of such direction. He submitted that, therefore, since the directions had not been complied with, the Court of Sessions had called upon the petitioner to produce the vehicles before the court. He submitted that, there was no challenge to the initial order passed by the revisional court, imposing that condition, and the challenge was only to the direction in respect of production of the vehicles before the revisional court.

4. There is, undoubtedly, some substance in the contention that the main prayer of the petitioner is directed against the order passed by the Sessions Court, calling upon the petitioner to remain present before the court with the vehicles in question. However, after having gone through the petition and the orders passed by the Magistrate, as also, by the Court of Sessions, in revision, in my opinion, the initial order passed by the revisional court itself was improper and contrary to law. Even if the Bank is having some claim or right over these vehicles and even if they are entitled to possess the same, for asserting their rights, they would have to move a Civil Court. It may be recalled that, the vehicles came to be seized in connection with particular offences in which the Bank was not at all concerned. The Bank cannot benefit from the seizure of the vehicles by the Police which was effected in the course of investigation of a crime unconnected between the petitioner and the Bank. The rights, if any, of the Bank, are totally independent of the alleged criminal acts performed by the petitioner and the Bank shall be free to exercise such rights in accordance with the terms of the agreement between the petitioner and them.

However, when the question of directing interim custody of the vehicles, as contemplated u/s 457 of the Code arose, there was no occasion to put forth a claim of their civil right before the Magistrate and to seek custody of the vehicles in that manner i.e. without getting the civil rights of the parties decided by a competent forum. Obviously, the Magistrate was not competent to decide the claim of the Bank to possess the vehicles in question.

5. Interestingly, the Bank was not a party at all to the application for return of the property made by the petitioner before the Magistrate. The Magistrate's order was passed after hearing the investigating agency and I find it proper and legal. Though it was possible for the Court of Sessions to have entertained an application for revision from the Bank, inasmuch as, revisional powers could be exercised even suo motu by the Court of Sessions, it was not proper for the Court of Sessions to have decided the civil rights of the parties in a revision against the order passed by a Magistrate, under the provisions of Section 457 of the Code.

6. The learned Counsel for the Bank has placed reliance on a decision of the Supreme Court of India, in the case of Bharath Metha Vs. State by Inspector of Police Chennai, , in support of his contention that, while exercising powers u/s 457 of the Code, it was open for a Magistrate to hand over the custody of the vehicle to a financier on the ground that the instalments of the loan had not been repaid. I find that the reliance placed by the Bank on this decision is totally misplaced. In that case, the financier was described as the registered owner of the vehicle in question, as per the agreement entered into between the parties. I specifically asked the learned Counsel for the Bank, as to whether the same was the case here also, but the learned Counsel conceded that it was not so.

7. In my opinion, the matter is squarely covered by the observations made by the Supreme Court, in the case of Manoj and Another Vs. Shriram Tpt. Finance

Co. Ltd. and Others, . The observations made by Their Lordships of the Supreme Court of India, leave no manner of doubt that, in a situation where a financier is aggrieved by the order directing release of vehicle to the registered owner, it would be open for him to approach the Civil Court, but it would not be permissible for him to invoke the jurisdiction of the Criminal Court to give effect to his alleged civil rights.

8. Though the prayer of the petitioner is directed basically against the order dated 21-9-2013-and not the original order passed by the revisional court-the petitioner has also prayed for an appropriate relief in the matter. Since the order passed by the Court of Sessions, in revision, is patently illegal and exceeds the jurisdiction vested in it, the same needs to be set aside by exercising the constitutional jurisdiction conferred upon this Court.

9. The petition is allowed.

The order dated 22-8-2011, passed by the Court of Sessions, and the order dated 21-9-2013, are, both, quashed and set aside.

The order dated 18-7-2011, passed by the Judicial Magistrate (First Class) [Railways], Aurangabad, in Miscellaneous Application No. 779/2011, is restored.

Rule is made absolute accordingly.