
(2023) 01 BOM CK 0015

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No.716 Of 2022

Mahindra & Mahindra
Financial Services Ltd

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: Jan. 4, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 407

Citation: (2023) 01 BOM CK 0015

Hon'ble Judges: G. A. Sanap, J

Bench: Single Bench

Advocate: M.R. Joharapurkar, S.A. Ashirgade

Final Decision: Allowed

Judgement

G.A. Sanap, J

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocate for the petitioner and learned Additional Public Prosecutor for

the respondent no.1/State. The respondent no.2 though served remained absent.

2. The order dated 25.11.2021 passed by the learned Judicial Magistrate First Class, Kamptee, Court No.2 in Miscellaneous Criminal Application

No.556 of 2021 is challenged by the petitioner. The petitioner is a finance company. The respondent no.2 had borrowed the vehicle loan from the

petitioner-company. On purchase of the vehicle bearing registration No.MH-40/BL-3419 the same was hypothecated with the petitioner. The vehicle

was involved in commission of crime therefore the same was seized by the police in crime bearing Crime No.221 of 2021 registered at Kanhan Police

Station for the offences punishable under Section 407 read with Section 34 of the Indian Penal Code.

3. The petitioner-company made an application on 07.10.2021 in the Court of Judicial Magistrate First Class at Kamptee for grant of custody and

possession of the vehicle. In the said application, the investigating officer filed reply on 24.11.2021. During the pendency of this application, the vehicle

owner Sandip Damodhar Batulwar made an application for handing over the custody of the vehicle to him on 22.11.2021. The Police filed say to this

application on 25.11.2021. The custody of the vehicle was claimed by the petitioner being financier with whom the vehicle was hypothecated as well

as by the registered owner.

4. The learned Magistrate instead of deciding both the applications together, first decided the application subsequently made by the registered owner

on 25.11.2021 and subject to certain conditions ordered the delivery of the custody of the vehicle to the registered owner Sandip.

5. The petitioner came to know about this order later on. Therefore, the petitioner has challenged the said order on multiple grounds. One of the

grounds is that either both applications should have been heard and decided together or the application made by the petitioner being first in point of

time should have been decided first.

6. The reply filed through investigating officer by the State has supported the order in favour of owner of the vehicle.

7. It is to be noted that when say was filed by the investigating officer to the application made by the registered owner on 25.11.2021 it was duty of

the investigating officer to disclose the pendency of the application for the same purpose by the petitioner before the same Court. The investigating

officer had filed say to the application made by the petitioner on 24.11.2021. It therefore goes without saying that the investigating officer had

knowledge of the pendency of the application made by the petitioner. The investigating officer was therefore required to disclose this fact in the reply

filed to the application made by the registered owner subsequently i.e. on 25.11.2021. It is further pertinent to note that in absence of knowledge of the

pendency of the application made by the finance company (the petitioner in this petition), the learned Magistrate decided the application made by the

registered owner on 25.11.2021. The learned Magistrate in the order has categorically stated that except the registered owner nobody has claimed the

custody of the seized vehicle. This observation would indicate that pendency of the application made by the petitioner was conveniently concealed

from the Court.

8. In my opinion, the investigating officer was duty bound to disclose the real state of affairs before the Court. Perusal of the application made by the

petitioner-finance company would show that the registered owner was the party to the said application as a non-applicant no.2. The Roznama placed

on record indicates that the vehicle owner remained absent. The application made by the registered owner would show that the petitioner-finance

company was not made party to the application for obtaining the custody of the vehicle. In my view, therefore, the application made by the finance

company being first in point of time ought to have been decided either before the application made by the registered owner or together with the

application made by the registered owner.

9. Shri M.R. Joharapurkar, learned advocate for the petitioner relying upon the decisions of Calcutta High Court in the case of M/s. Chola mandalam

Investment & Fin Co Ltd Vs. State of West Bengal reported in Law Finder Doc ID#1458971, Karnataka High Court in the case of K.W. Ganapathy

Vs. State of Karnataka reported in Law Finder Doc ID#1225 and this Court in the case of Tata Capital Financial Services Limited Vs. State of

Maharashtra and others (Criminal Application (APL) No.430 of 2014), submitted that in such situation custody of the vehicle can be handed over to

the finance company and finance company can be allowed to sell the vehicle.

10. In my view, on both counts the order passed by the learned Magistrate without hearing the finance company and before taking any decision on the

application made by the finance company cannot be sustained. The petition therefore deserves to be allowed. The petition is allowed.

11. The impugned order dated 25.11.2021 passed by the learned Judicial Magistrate First Class, Kamptee, Court No.2, below Exhibit-1 in

Miscellaneous Criminal Application No.556 of 2021 is set aside.

12. The application bearing Miscellaneous Criminal Application No.556 of 2021 is restored to the file.

13. The learned Magistrate on restoration of the application made by the registered owner shall decide the application made by the petitioner-finance

company and the registered owner together after giving opportunity of hearing to all the parties.

14. The learned Magistrate shall take all such necessary steps to secure the custody of the vehicle in the meantime.

Rule made absolute in above terms.