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	Duration	: Ys.Ms.Ds. 06-10-14

**IN THE COURT OF THE ADDITIONAL SESSIONS
JUDGE, JAYSINGPUR, AT JAYSINGPUR.
(Before G.B. Gurao)**

Criminal Revision Appln. No.9/2019.
Exh. No.

Shri. Sachin Subhash Gaikwad,
A/a 37 Yrs., Occu.- Business
R/o Kudal Tal.- Palus
Dist.- Kolhapur. ... **Applicant**

Vs.

- 1] **State of Maharashtra,**
- 2] **Shri.Raju Hanmanta Kurahade,**
A/a 37 Yrs., Occu.-Stone supplier,
R/o Shahunagar, Jaysingpur
Tal.- Shirol, Dist.- Kolhapur. ... **Respondents**

Revision Application U/s. 397 of Cr.P.C.

 Shri. V.V.Kadam, Advocate for the Applicant
 Shri. U.M. Kulkarni, Advocate for the respondent No.1.
 Shri.Shital Kamble, advocate for the respondent No.2.

J U D G M E N T
(Delivered on 06-04-2026)

By this revision, original accused/applicant has challenged correctness of the order below Exh.4 in Misc.Criminal Case

No.116/2019, dated 13-05-2019 passed by learned Judicial Magistrate First Class, Jaysingpur.

2] **Facts in brief are as under;**

Respondent No.2 Raju Kurhade is the original complainant and he filed complaint before learned Magistrate against applicant for the offence punishable under section 406, 420 of the Indian Penal Code. It is alleged that the complainant is the owner of JCB bearing No.MH-09-CL-1220. Complainant has taken loan from Shriram Finance Ltd. and JCB vehicle is hypothecated to Shriram Finance Ltd. Till 1-10-2018 complainant repaid loan amount of Rs.52090/-. Thereafter complainant could not repay the loan and accordingly, accused/applicant agreed to purchase the vehicle. Accused agreed to purchase the vehicle for consideration of Rs.5,50,000/-. Accused paid Rs.1,00,000/- to the complainant. Accused agreed to pay the loan amount of Rs.4,50,000/- to Shriram Finance Ltd. Accordingly, on 01-10-2018, agreement is executed between the complainant and accused.

3] Complainant handed over the JCB machine to accused. However, accused has not acted as per the agreement. Accused has not repaid the loan amount. Complainant received notice from Shriram Finance Ltd. for payment of loan amount of Rs.10,81,145/-.

4] Complainant gave complaint to police station. But police have not taken action and therefore, this private complaint.

5] Complainant filed application at Exh.4 under section 94 of Criminal Procedure Code for search and production of JCB vehicle. The learned Magistrate passed the following order;

ORDER

Perused record. It appears that the complainant has by agreement given the impugned vehicle to the accused. The offence alleged is under section 406 and 420 of IPC. Therefore, the vehicle is necessary to be produced before the court. Hence, the application is allowed. Issue search warrant as prayed.

6] Being aggrieved by the said order, accused/applicant raised points that the impugned order is incorrect and illegal. The learned Magistrate has not applied mind and prejudice is caused to the applicant/accused. The property i.e. JCB vehicle is not stolen property and therefore, the provisions of section 94 of Cr.PC. do not apply to the present case. In fact, there is transaction of sell of JCB vehicle between complainant and accused. The dispute is of civil nature. Thus, the ingredients of section 406, 420 do not apply.

7] Mr. Vaibhav Kadam, advocate for applicant/accused submitted that the vehicle is transferred as per the agreement. Thus, the dispute is of civil nature. In fact, still process is not issued against the accused. Learned Magistrate has not applied judicial mind. The impugned order is passed without hearing the accused. The JCB vehicle is not stolen property and therefore, search warrant cannot be issued under section 94 of Cr.PC. Hence, he prayed to set aside the impugned order.

8] Mr. Shital Kamble, advocate for complainant/respondent has submitted that the complainant had entrusted the property i.e. JCB vehicle with accused as per the agreement. Accused has not repaid the loan of Shriram Finance Ltd. and complainant has received notice

from Finance company. Therefore, it is necessary for the production of vehicle. He further submitted that the learned Magistrate can decide the question of custody of vehicle. He invited my attention towards the documents on record and submitted that there is prima facie evidence against the accused that he committed the alleged crime. He supports the impugned order and prayed to dismiss the revision petition.

9] From the rival submissions of both the parties, following points arise for my consideration. I record my findings against them for the reasons given below.

Sr. No.	Points	Findings
1.	Whether the impugned order is legal and proper ?	Yes.
2.	What order ?	As per final order.

REASONS

As to point Nos.1 and 2 :-

10] This is revision application. Therefore, this court has to confine the findings only to the extent of legality and propriety of the impugned order. The sum and substance of the complaint is that by the agreement complainant entrusted JCB vehicle to the accused. Accused had assured to repay the loan of Shriram Finance Ltd. within two months. However, the complainant received notice from Shriram Finance for repayment of loan.

11] I have perused the agreement. It clearly reveals that accused had assured to repay the loan amount. Section 94 of Cr.P.C. reads as,

Search of place suspected to contain stolen property, forged documents, etc.—(1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of **stolen property**, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable—

- (a) to enter, with such assistance as may be required, such place,
- (b) to search the same in the manner specified in the warrant,
- (c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies,
- (d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety,
- (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to be stolen property or, as the case may be, objectionable article to which this section applies.

(2) The objectionable articles to which this section applies are—

- (a) counterfeit coin;
- (b) pieces of metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under section 11 of the Customs Act, 1962 (52 of 1962);
- (c) counterfeit currency note; counterfeit stamps;
- (d) forged documents;

- (e) false seals;
- (f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);
- (g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

12] Section 410 defines stolen property as,

Stolen property.—Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “**stolen property**”, [whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without [India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

13] Section 405 of IPC defines criminal breach of trust as,

Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or **of any legal contract**, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

14] Thus, from the perusal of legal provisions, it appears that there was contract between the complainant and accused. As per the contract complainant entrusted JCB vehicle to accused. But accused as agreed did not repay the loan amount. Therefore, the application

under section 94 of Cr.P.C. for search and production of JCB vehicle is maintainable and learned Magistrate has rightly passed order to produce the JCB vehicle in the court. The question of custody of JCB vehicle can be decided by Magistrate. Therefore, I find that impugned order is legal and requires no interference by the revisional court. I answer the point accordingly and pass the following order;

::ORDER::

Revision petition is dismissed with costs.

Jaysingpur.
Dt.: 06-04-2026.

(G.B. Gurao)
Addl. Sessions Judge, Jaysingpur.