

MHAU010073382022 	Presented on : 03-10-2022 Registered on : 06-10-2022 Decided on : 10-05-2023 Duration : 0 years, 7 months, 7 days
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IN THE COURT OF ADDITIONAL SESSIONS JUDGE-9
AURANGABAD, AT AURANGABAD
(Presided Over by P. P. Sharma)

Criminal Revision Appeal No.232/2022

Exh. No.4/A

Manoj s/o. Gopinath Gule,
Age : 42 Years, Occ.: Agril.,
R/o.: Nakshatrawadi, Tq. Paithan, : Revision Petitioner.
Dist. Aurangabad.

VERSUS

The State of Maharashtra,
Through Phulambri Police Station,
Tq. Phulambri, Dist.Aurangabad. : Revision respondent.

CLAIM : Revision under Section 397 of Code Of Criminal Procedure against the order passed in Criminal M.A.No.18/2022 by J.M.F.C. Phulambri under Section 457 of Code Of Criminal Procedure

Shri. S. N. Shirsath, Ld. Advocate for the Revision Petitioner.

Shri. S. M. Sontakke, Ld. Advocate for the State.

J U D G M E N T

(Delivered on: 10-05-2023)

The legality, propriety and correctness of order dated 02nd March 2022, passed by Ld. Judicial Magistrate F.C. Phulambri, in Criminal M. A. No.18/2022 whereby and where under, the partly rejection of property return application, under Section 457 of the Code Of Criminal Procedure, is assailed in this revision.

2) Short of superfluities, the brief facts which led to this revision can be stated as under ;

C.R.No.332/2021 was registered in the police station Phulambri for the offence punishable under Section 379 of the Indian Penal Code. It was alleged that, the accused in the aforesaid crime was found by the police, while carrying the sand in Tractor and Trolley. The accused fled away from the spot. The police seized the Tractor and the Trolley from the spot. The present revision petitioner had filed aforesaid number criminal miscellaneous application before the Ld. J.M.F.C. Phulambri. It was partly allowed by the J.M.F.C. Phulambri. The Tractor was given the present revision petitioner. However, the Ld. J.M.F.C. rejected the prayer of Trolley.

3) Being aggrieved by and dissatisfied with the impugned order, the petitioner preferred this revision.

4) In the light of the grounds in the revision petition and material on record, the following points arise for my consideration. I have recorded my findings against each of them for the reasons to follows ;

<u>P O I N T S</u>	<u>F I N D I N G S</u>
1) Whether the Ld. J.M.F.C. was justified in : partly allowing the application no.18/2022 ?	Yes.
2) Whether any interference is warranted in the : impugned order ?	No.
3) What order?	: Criminal Revision is rejected.

R E A S O N S

AS TO POINTS NOS.1 TO 3:-

5) The present revision was filed on 10-11-2022. The investigation officer filed the say on 14-11-2022. Thereafter, the matter was posted for the hearing. Number of time, the revision

petitioner and his advocate was called. However, nobody turned. The matter is pending since long. I therefore, decided to dispose of present revision on the basis of document filed in the petition and the order of Ld. J.M.F.C. Phulambri.

6) Ld. J.M.F.C. Phulambri, partly allowed Criminal Miscellaneous Application No.18/2022. The Ld. J.M.F.C. allowed the application about the Tractor on the basis of documents of ownership. However, the Ld. J.M.F.C. rejected the prayer of release of Trolley on the count that, the petitioner failed to produce document of ownership. The finding of Ld. J.M.F.C. is as under ;

अर्जदार याने जप्त केलेल्या ट्रॅक्टरवरील त्याची मालकी शाबीत केली आहे. परंतु जप्त केलेल्या ट्रॉलीची मालकी शाबीत केलेली नाही. तपासक अधिकारी यांनी दाखल केलेले लेखी म्हणणे पाहता ट्रॅक्टर व ट्रॉली पोलीसांनी पकडली त्यावेळी त्याचा चालक तेथुन पळुन गेला होता. अर्जदार याने ट्रॉलीच्या मालकीबाबत कोणतेही कागदपत्र सादर केलेले नाही. त्यामुळे जप्त केलेली ट्रॉली नेमकी कोणाच्या मालकीची आहे व ती कोणाच्या ताब्यातून जप्त केली याबाबत निश्चित अनुमान काढता येत नाही. सबब, जप्त केलेली ट्रॉलीचा अंतरिम ताबा अर्जदार याच्याकडे देता येणार नाही. गुन्ह्याची सुनावणी पूर्ण होवुन अंतिम निर्णय होण्यास बराच कालावधी लागणार नाही. या दरम्यान जप्त केलेले ट्रॅक्टर पोलीस ठाणे, फुलंब्री यांच्या आवारात उघडयावर ठेवल्यास त्याला गंज लागून त्याचे नुकसान होण्याची शक्यता नाकारता येत नाही. सबब, मा. सर्वोच्च न्यायालयाने वरील न्यायनिर्णयामध्ये नोंदविलेल्या निष्कर्षाचा आधार घेवुन अर्जदार याचेवर उचित अटी व शर्ती घालुन जप्त केलो फक्त ट्रॅक्टर त्याच्या ताब्यात देणे न्यायसंगत होईल, या निष्कर्षापर्यंत मी पोहोचलो आहे. अर्जदार याचा अर्ज अंशतः मंजूर होण्यास लायक आहे.

7) A perusal of aforesaid finding, it seems that, the Ld. J.M.F.C. rightly considered the fact that the petitioner failed to

show his ownership over the Trolley. Admittedly, the Trolley was not recovered from the revision petitioner. He has not produced any document of his ownership. The Trolley was without number. As per record, the charge sheet in the Crime no. 332/2021 was not filed against the present revision petitioner. Therefore, I do not find any illegality in the order of Ld. J.M.F.C. I, therefore, answer point no.1 and 2 as per above discussion in the negative and in answer to point no.3 I pass following order.

ORDER

Criminal Revision Application No.232/2022
is rejected.

Date:- 10-05-2023
Place:- Aurangabad.

(P. P. Sharma)
District Judge-9 And
Additional Sessions Judge,
Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are the same, word to word, as per the original Judgment.

Name of the Stenographer	:	Sau. M. P. Suryawanshi (Salve),
Court	:	P. P. Sharma, District Judge-9, Aurangabad
Date	:	10-05-2023
Judgment signed by the presiding officer on	:	12-05-2023
Judgment uploaded on	:	12-05-2023