

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Criminal Revision No. 1713 of 2016

Date of decision: 02.08.2016

Au Financiers India Ltd.

-----Petitioner (s)

V/s

State of Punjab and another

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Ms.Anindita Katyal, Advocate for
Mr. Varun Katyal, Advocate for the petitioners.

Mr. Sultan Singh Gill, DAG, Punjab.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present petition against the order dated 05.02.2016 passed by learned Addl. Sessions Judge, Jalandhar, whereby the application filed by the petitioner for the release of vehicle Volkswagen Polo bearing Registration No.PB-08-CK-2625 on superdari has been dismissed.

Learned counsel for the petitioner contends that the petitioner has filed an application seeking release of the vehicle in question in FIR case No.42 dated 10.03.2015 under Section 307, 323, 148, 149, 379 and 506 IPC registered at Police Station, Phillaur, Distt. Jalandhar (Rural). However, the said application was dismissed by the learned trial Court on the ground that the application seeking release of vehicle in question has been moved by third party i.e. Financer and not by the owner of the vehicle, so the vehicle in question cannot be given to the applicant-petitioner.

Learned counsel for the petitioner while referring to the

Judgment of Hon'ble Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003(1) R.C.R. (Criminal) 380** contends that the petitioner being financier possesses a legitimate control over the vehicle in question, and, therefore, it cannot be said that the petitioner is a third party. Moreover, the petitioner has a valid interest in the vehicle in question. However, in case the vehicle in question is released, the petitioner undertakes to abide by all the terms and conditions imposed by the learned trial Court and the petitioner shall not alienate or transfer the vehicle without prior permission of the Court.

On the other hand, learned counsel for the State has argued that the petitioner being a stranger to the litigation has no right to seek release of the vehicle in question on superdari.

Heard.

In view of the judgement of **Sunderbhai Ambalal Desai's case (supra)** wherein the Hon'ble Apex Court has observed that 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. The fact remains that the vehicle in question has been kept parked since March 2015, its value will keep going down and would be junked day by day.

Hon'ble the Supreme Court in the case of **Sunderbhai Ambalal Desai 's case (supra)**, has laid down certain guidelines for release of impounded vehicles which are reproduced as under:-

“1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to

keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

Since the vehicle in question is a case property and the vehicle is not being put to use, its value is going to be depreciated day by day.

Accordingly, the present petition is allowed. The impugned order dated 05.02.2016 passed by learned Addl. Sessions Judge, Jalandhar is set aside and the vehicle in question is ordered to be released to the petitioner, on superdari, on his furnishing indemnity bonds/surety bonds of the like amount or on the terms and conditions which may be imposed by the trial Court.

The petitioner shall submit an undertaking that the said vehicle shall not be put to any illegal use in future and he will produce the vehicle in the Court, if so required.

02.08.2016
Anjal

[HARI PAL VERMA]
JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No