IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 620 OF 2016

Tata Motors Finance Ltd.
Having it's office at
Silicon Plaza, Senapati Bapat
Road, Pune
Through it's authorised representative
And Power of Attorney Holder
Manoj s/o. Krishnarao Bijwe
Age 33 years, Occu. Service,
R/o. Pride Silicon Plaza,
Senapati Bapat Road, Pune. **....Petitioner.**

Versus

1. The State of Maharashtra
Through Wadhwana Police Station,
Tq. Udgir, Dist. Latur in
Crime No. 21/2014.

2. Nijam Ajmodin Pathan,
Age Major, Occu. Busi.,
R/o. Mohija Paranda,
Tq. Kandhar,
Dist. Nanded – 431742. **....Respondents.**

Mr. S.S. Panale, Advocate for petitioner.

Mr. S.J. Salgare, APP respondent No. 1/State.

Mr. A.S. Lomte, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 10th January, 2017.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The petition is filed to challenge part of order made by the learned Judicial Magistrate, First Class, Udgir in Criminal M.A. No. 576/2015 and the decision of Criminal Revision No. 23/2015, which was pending in the Court of Additional Sessions Judge, Udgir. There are allegations against a driver of the truck that he sold the goods, jaggery to third person without permission of owner of the goods and thereby committed the offences of criminal misappropriation and breach of trust.

3) Present petitioner is finance company, which had given loan to the registered owner of the truck on hypothecation basis. By filing aforesaid application in the Court of J.M.F.C., the finance company had prayed for interim custody of the vehicle and also for getting permission to sell the truck. It is the case of finance company that if the vehicle is kept idle, it’s value will get reduced and the finance company will suffer loss. It is the case of finance company that the debtor has committed default and proceeding is started against the debtor for recovery of amount due from him. The learned J.M.F.C. allowed the application partly and gave interim custody of the vehicle to the present petitioner. However, the permission to sell the vehicle was not given and so, the aforesaid revision was filed by the present petitioner in Sessions Court. The Sessions Court has dismissed the revision by

observing that no objection is not given by Investigating Officer and also the registered owner for such sale.

4) The learned counsel for petitioner, finance company, placed reliance on the observations made by the Apex Court in the case reported as **2002 (10) Supreme Court Cases 283 [Sunderbhai Ambalal Desai Vs. State of Gujarat]** and **(2010) 6 Supreme Court Cases 768 [General Insurance Council and Ors. Vs. State of Andhra Pradesh and Ors.].** In these cases, the Apex Court has given guidelines and directions to subordinate Courts to see that the vehicles are not kept idle and the proceedings filed for interim custody and also for permission to sell the vehicle are decided immediately. The observations made in the case of **General Insurance Council** cited supra can be found at para Nos. 13 and 14 and they are as under :-

> "13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai* considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

> "(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.
>
> (B) The photographs so taken may be used as secondary evidence during trail. Hence, physical production of the vehicle may be dispensed with.
>
> (C) Insurer would submit an undertaking/guarantee to remit the proceeds form the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/ guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy

> substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director General of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned."

5) In view of the facts of the present matter and as it can be safely said that the vehicle was not used for commission of the offence and in view of the guidelines given by the Apex Court, this Court holds that permission ought to have been given by the J.M.F.C. to the finance company to sell the vehicle by auction sale. The order made by J.M.F.C. shows that already

necessary precaution is taken to see that necessary record for identification of vehicle is created. This Court holds that interference is warranted in the order made by the J.M.F.C. to some extent to allow the finance company to sell the vehicle by auction sale. In the result, following order is made.

O R D E R

The petition is allowed. The order made by the learned J.M.F.C. Udgir, refusing permission to sell the vehicle is hereby set aside and that relief is granted in favour of present petitioner. The vehicle is allowed to be auction sold and the sale proceeds can be kept by the present petitioner. The bond already executed is to be used in this regard also and such oral undertaking is given by the learned counsel for petitioner in the present matter. Same bond will be used for recovery of amount. The petitioner is to take care and see that notice in advance is given to registered owner of the date of auction sale so that the registered owner can remain present at the time of auction sale. He is allowed to stake claim by way of bidding also and this will take care of his apprehension that the finance company may sell the vehicle below the market price. In those terms, rule is made absolute.

[T.V. NALAWADE, J.]

ssc/