

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 730 OF 2018

Cholamandalam Investment
& Finance Co.Ltd. registered
under the Companies Act,
having registered office at
Dare House No. 2, N.S.C.
Bose Road,Parrys,
Chennai – 600 001
Through Area Legal Manager/
Special Power of Attorney
Holder – Mr. Yogesh s/o
Krushanrao Naik
Age : 40 Yrs., Occ. Service
as (Area Legal Manager),
R/o : Jagtap Building, above
Union Bank, Shahnoormiya
Dargah Road, Sahakar Nagar,
Aurangabad.

.... APPLICANT

V E R S U S

1. The State of Maharashtra
2. Sayed Nasir Sayed Khadir
Age : Major, Occ. Business,
R/o : Mehabobiya Colony,
Degloor Naka, Nanded.

.... RESPONDENTS

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Mr. S.S.Panale, Advocate for Applicant.

Mr. A.P.Basarkar, A.P.P. for R – 1 – State.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 01/08/2019

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JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard finally.
2. Heard learned counsel for applicant and learned A.P.P. for State. Perused the order passed by learned J.M.F.C. The respondent No. 2 though served, absent.
3. The applicant has moved this application u/s 482 of Cr.P.C. seeking following relief.

"The applicant may kindly be permitted to sell the vehicle i.e. TATA Ace bearing registration No. MH-26-AD-6712 bearing Engine No. 275IDIO6LXYSP5051 and Chassis No. MAT445056CZNA2604 on conditions which may deem proper and suitable to this Hon'ble Court."

4. The applicant claims to be a registered company duly registered under the provisions of Companies Act, 1956 and deals in the business of providing finance/loan for purchase of commercial vehicles. The Respondent No. 2 had approached the applicant and availed loan for purchase of vehicle i.e. TATA Ace bearing registration No. MH-26-AD-6712 bearing Engine No. 275IDIO6LXYSP5051 and Chassis No. MAT445056CZNA2604 [hereinafter referred to as "said vehicle"]. Upon execution of loan agreement and other documents in favour of applicant, the applicant – Company advanced loan for purchase of said vehicle. The said vehicle was duly hypothecated with applicant – Company and entry to that effect duly recorded with the record maintained by Regional Transport Office, Nanded where the vehicle has been insured. Pursuant to the complaint lodged by one Nagorao Sheshrao Narwade, the offence u/s 323,342,394 of I.P.C. and sections 4 and 5 of Indian Arms Act came to be registered against unknown persons vide Crime No. 91/2016 registered with Kurunda police station, district Nanded. During the

course of investigation of Crime No. 91/2016, the said vehicle was seized by police. Since the year 2017 the vehicle is lying with police as property attached in said crime. The vehicle in question being hypothecated with applicant – company and company is entitled to take physical custody of vehicle and realize its dues by selling the hypothecated vehicle, the applicant approached learned J.M.F.C., Basmat, District Parbhani by way of application filed u/s 457 of Cr.P.C. which came to be registered as Misc. Application No. 238/2017. By order dated 30/10/2017 learned Magistrate allowed the application and directed to hand over interim custody of vehicle to applicant by executing Bond of Rs. 2 Lakhs with condition that vehicle in question shall not be sold, alienated till final disposal of case. Beside condition not to sell, alienate the vehicle, learned Magistrate has imposed other conditions including the condition to produce said vehicle as and when directed by the Court.

5. Being aggrieved by the condition imposed to

restrain applicant to sell, alienate said vehicle, the applicant – Company has approached this Court seeking permission to sell said vehicle on such terms and conditions as may deem fit and proper by this Court.

6. In brief, it is the contention of applicant – company that respondent No. 2 has defaulted in making payment of loan in terms of agreement. On failure to pay loan amount, the applicant is entitled to sell the vehicle hypothecated to realize its dues. In terms of deed of hypothecation, the applicant is entitled to take physical custody of said vehicle and sell the same to realize its outstanding dues. It will take long time to decide the criminal proceeding. Since the year 2017 the vehicle is lying idle. By the passage of time it will loose its value and turn into scrap. In this back-ground, learned counsel urge to invoke inherent jurisdiction of this Court u/s 482 of Cr.P.C. to allow the applicant to sell the said vehicle towards recovery of its loan due and payable by respondent No. 2. In support of this submission,

learned counsel has referred and relied upon the orders passed by this Court in the case of ***Tata Motors Finance Ltd. V/s The State of Maharashtra and Anr. Reported in 2018 ALL MR (Cri.) 636*** and decision in ***Criminal application No. 7178 of 2017 [Cholamandalam Investment and Finance Co. Ltd. V/ s The State of Maharashtra and another]*** decided on ***13/02/2018 [CORAM : PRASANNA B.VARALE,J.]***.

7. Respondent No. 2 though served, failed to appear and contest the application.

8. Learned A.P.P. contended that the vehicle in question was seized in connection with offence of robbery and same deserves to be preserved till conclusion of trial. Release of said vehicle at this stage may affect the trial.

9. There is no dispute as to the fact that vehicle in question was purchased by respondent No. 2 by securing loan from applicant and same was hypothecated with applicant. The endorsement in respect of hypothecation of vehicle is claimed to be

recorded with Regional Transport Officer, Dhule. The trial Court has allowed the application vide Order dated 30/10/2017 passed in Criminal Misc. Application No. 238/2017. Pursuant to the order dated 30/10/2017, interim custody of vehicle has been ordered to be handed over to the applicant on execution of bond.

10. The Apex Court in the case of *Sunderbhai Ambalal Desai V/s State of Gujarat reported in (2002) 10 Supreme Court Cases 283* has laid down broad guidelines to be followed for disposal of properties/articles seized during the course of investigation as well as trial. After examining the scope of exercise of powers u/s 451 as well as section 457 of Cr.P.C., the Apex Court has ruled that section 451 of Cr.P.C. empowers the Court to pass appropriate order to sell or otherwise dispose of property seized pending conclusion of inquiry or trial. In para No. 5 and 7, the Apex Court has observed as under :

" 5. Section 451 clearly empowers the Court to pass appropriate orders with

regard to such property, such as :

- (1) for the proper custody pending conclusion of the inquiry or trial ;*
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary ;*
- (3) if the property is subject to speedy and natural decay, to dispose of the same.*

7. In our view, the powers under section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely :

- (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 panchanama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence should 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. "

11. The Apex Court has also observed that the vehicles seized and kept unattended in the premises of police station, become junk day by day. In respect of vehicle seized during the course of investigation and pending trial, the Court has observed in para Nos. 17 and 18 as under.

" 17. In our view, 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. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then the insurance company be

informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared. "

12. Thus, it is well within the powers of Court to pass an appropriate order in respect of disposal of property pending inquiry or trial if the property is subject to speedy and natural decay.

13. It is a matter of common knowledge that if vehicle is seized and kept idle in the police station; such vehicle by passage of time become unworthy of driven on road. In the case of ***General Insurance Council and Ors. V/s State of Andhra Pradesh and Ors. reported in (2010) 6 Supreme Court Cases 768***

in para No. 14 the Apex Court has noted as under.

" 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 Generals 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. "

14. In the case of ***Tata Motors Finance Ltd. V/s The State of Maharashtra & Anr. reported in 2018 ALL MR (Cri.) 636*** this Court has dealt the similar challenge and allowed the application of Finance Company to sell the vehicle. In para No. 5, the Court has observed as under.

" 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. "

15. In the case in hand, there is no dispute that

vehicle in question was hypothecated with applicant – company. The applicant – company has produced on record the particulars of registration of vehicle issued by R.T.O., Nanded wherein there is endorsement as to hypothecation of said vehicle with applicant – company. Respondent No. 2, the owner of vehicle though served, failed to appear and contest the application. From the copy of F.I.R. produced on record as Exh. B, the vehicle in question has been seized in connection with the offence committed on 18/12/2016. The vehicle in question alleged to be used for transportation of bullocks i.e. the property alleged to be robbed. In the F.I.R. there is no reference of vehicle in question. The offence is claimed to be committed by unknown persons. It will take long time to proceed with the trial. The vehicle is lying with police satiation for more than 3 years. While passing order of interim custody, the learned J.M.F.C. has observed that no purpose would be served to keep the vehicle in police station and the condition of vehicle will be deteriorated day by day if kept idle at police station.

16. In my view, it is not desirable to keep the interim custody of vehicle in question for indefinite period with the applicant as by the passage of time, the vehicle will lose its value. It may convert into scrap. The vehicle in question is not the stolen article involved in the commission of offence. It is only alleged that vehicle in question has been used for transportation of animals in respect of which theft alleged to have committed by unknown persons. It is within the scope of exercise of powers of Magistrate to permit to order disposal of vehicle pending investigation/trial as same is subject to speedy and natural decay.

17. Although the applicant has approached this Court for permission to sell the vehicle, the perusal of application seeking custody of vehicle filed by the applicant reflects that relief claimed therein confines to interim custody of vehicle, which came to be allowed vide order dated 30/10/2017. Subsequent to order dated 30/10/2017, no application was made seeking permission to sell the vehicle. Since the

remedy is available to the applicant to approach trial Court and seek permission to sell the vehicle on such terms and conditions as deem fit and proper by the trial Court, it is not desirable for this Court to entertain application and grant such permission in its inherent exercise of powers u/s 482 of Cr.P.C. I am, therefore, inclined to pass the following order.

ORDER

The applicant is granted liberty to make application in trial Court seeking permission to sell the vehicle in respect of which interim custody has been granted in its favour vide order dated 30/10/2017. In case such application is filed, the trial Court is directed to decide the same on its own merit within four weeks from the date of filing of such application.

18. Rule made absolute in above terms.

**[V.L.ACHLIYA]
JUDGE**

KNP.