

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

**CRIMINAL APPLICATION NO. 1307 OF 2018**

Equitas Small Finance Bank Limited

(Formerly known as M/s Equitas  
Finance Ltd) having its registered  
office at Spencer Plaza, 4<sup>th</sup> floor,  
Phase-II, No. 769, Mount Road,  
Anna Salai, Chennai – 600 002.

Through its Branch Manager &  
Special Power of Attorney

Holder – Mr. Santosh s/o  
Sahadeo Parab, Age : 43 Yrs.,  
Occ. Service, Branch Office :  
A-5, Suyash Complex  
Above Sarathi Electricals,  
Kalda Corner, Chetana Nagar,  
Aurangabad – 431 001.

**.... APPLICANT**

**V E R S U S**

1. The State of Maharashtra

2. Avinash Kailash Thorat

Age : Major, Occ. Agri. &  
Business, R/o : Plot No. 24,  
Ganesh Nagar, Ramrai Road,  
Waluj, Aurangabad.

**.... RESPONDENTS**

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

Mr. K.D.Munde, A.P.P. for R – 1 – State.

Respondent No. 2 served, absent.

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**CORAM : V.L.ACHLIYA, J.**

**DATE OF JUDGMENT : 17/07/2019**

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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.

*" (B)The applicant may kindly be permitted to sale the vehicle i.e. TATA Truck (Model-SK 1613), 2007, Engine No. 697TC56052121607, Chassis No. 673135DSZ718911 bearing registration No. MH-20-BT-3921 on conditions which may deem proper and suitable to this Hon'ble Court."*

*'C' The Order dated 14/09/2016 passed*

*by Ld. J.M.F.C., Gangapur in Cri.M.A. No. 477/2016 and Order dated 08/06/2017 passed by Ld. Adhoc District Judge-1, Vaijapur, District Aurangabad in Crim.Revision No. 24/2016 be quashed and set aside or modified as this Hon'ble Court may deem proper and suitable. "*

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 vehicles. The Respondent No. 2 had approached the applicant and availed loan for purchase of vehicle i.e. TATA Truck (Model-SK1613),2007,Engine No.697TC56052121607 Chassis No. 673135DSZ718911 bearing registration No. MH-20-BT-3921 [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, Aurangabad where the vehicle has been insured. The respondent No. 2 defaulted in

repayment of loan. Hence, the applicant invoked the arbitration clause in the agreement and referred dispute to arbitrator. Arbitrator has passed Award on 27/06/2016. In mean time one offence came to be registered vide Cr. No. 204/2015 by father of respondent No. 2 against one Santosh Arun Jagtap for the offences punishable u/s 406,420 r/w 34 of I.P.C. was seized by Waluj police. As per complaint filed, the accused had enter into agreement to repay loan but sold to third person without consent of respondent No. 2. The vehicle in question being hypothecated with applicant – company and company is entitled to take physical custody of vehicle to realized its dues by selling the hypothecated vehicle, the applicant approached learned J.M.F.C., Gangapur, District Aurangabad by way of application u/s 457 of Cr.P.C. which came to be registered as Crim. Misc. Application No. 477/2016. By order dated 14/09/2016 learned Magistrate allowed the application and directed to hand over interim custody of vehicle to applicant by executing Bond of Rs. 8 Lakhs with condition that vehicle in question shall not

be sold, alienated. 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. Being aggrieved by the order to grant only interim custody with condition not to sale and not entertain the request to sale the vehicle towards realization of its dues, the applicant preferred revision before the Court of Additional Sessions Judge, Vaijapur, District Aurangabad as Criminal Revision No. 24/2016. Vide order dated 08/06/2018 the revisional Court dismissed revision.

5. Being aggrieved by the condition imposed to not to sell, alienate said vehicle and refused to entertain prayer for sale of vehicle, the applicant – Company has approached for 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 more than three years 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 criminal breach of trust and cheating 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, Aurangabad. The trial Court has allowed the application vide Order dated 14/09/2016 passed in Criminal Misc. Application No. 477/2016. Pursuant to the order dated 14/09/2016, interim custody of vehicle has been ordered to be handed over to the applicant on execution of bond. The Courts below refused to grant permission to sale the vehicle on the

ground no such powers can be exercised while dealing with application u/s 451 of Cr.P.C.

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 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. Therefore, the orders passed to refused to consider the prayer for disposal of property is not in consonance with settled position in law.

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., Aurangabad 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. It will take long time to proceed with the trial. The arbitrator has passed award against respondent No. 2. The vehicle is lying with police station for more than two 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 idle 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. It is well 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. In that view, impugned orders are not sustainable in law. I am, therefore,

inclined to pass the following order.

**ORDER**

[i] The application is partly allowed.

[ii] The order passed by trial Court and confirmed by revisional Court to refuse to grant permission to sale the vehicle is set aside.

[iii] The applicant is permitted to sale the vehicle after receiving its custody in terms of order dated 14/09/2016 passed by trial Court on following conditions.

[a] The applicant shall file written undertaking to the effect that applicant shall deposit the amount to the extent of amount received by sell of vehicle within four weeks in case the trial Court direct the applicant to deposit such amount.

[b] The sell of vehicle shall be made by public auction.

[c] The applicant shall give prior notice of date, time and place fixed for sell of vehicle by public auction to the owner of vehicle as well as Investigating Officer.

[d] The applicant shall intimate to the Court concerned the name of person to whom the vehicle is sold and the amount received towards sell of vehicle.

17. Rule made absolute in above terms.

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

KNP.