

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

CRIMINAL APPLICATION NO. 1920 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. Dharasing s/o Bhavsing Nikam
Age : Major, Occ. Business,
R/o : Lamkani, Tq. Shindkheda,
Dist. Dhule, at present
R/o : Sai Nagar, Old Air Port,
Chalisgaon, Dist. Jalgaon. **RESPONDENTS**

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

Mr. S.W.Munde, A.P.P. for R – 1 – State.

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CORAM : V.L.ACHLIYA, J.

DATE OF JUDGMENT : 12/06/2019

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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 trial Court. 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 Motors Truck-HGV, 2004 bearing registration No. MH-18-M-6713 bearing Engine No. 697TC45BVZ860192 and Chassis No. 373341BVZ705606 on conditions which may deem proper and suitable to this Hon'ble Court by quashing and setting aside order dated 09/03/2018 passed in Crim. Misc. Application

No. 63/2018 by learned J.M.F.C. at Bhadgaon, District Jalgaon.

4. Being aggrieved by order dated 09/03/2018 passed in Criminal Misc. Application No. 63/2018 by learned J.M.F.C., Bhadgaon, District Jalgaon to reject the application filed by applicant seeking permission to sell the vehicle, hypothecated with applicant, the applicant has preferred this application. 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 to the needy for purchase of commercial vehicle. Respondent No. 2 had availed loan facility from the applicant for the purchase of vehicle i.e. TATA Motors Truck - HGV 2004 bearing registration No. MH-18-M-6713 [hereinafter referred to as "said vehicle"]. The amount of loan was disbursed to respondent No. 2 on execution of loan agreement and other documents in favour of applicant. Beside the loan agreement, the respondent No. 2 has executed deed of hypothecation in favour of applicant and thereby hypothecated the

said vehicle with applicant – Finance Company. The Regional Transport Officer, Dhule was duly intimated as to hypothecation of said vehicle in favour of applicant. Accordingly, the endorsement in respect of hypothecation of vehicle with the applicant – Finance Company was duly recorded in his record by the Regional Transport Officer, Dhule.

5. On 03/02/2016, the offence came to be registered vide Crime No. 21/2000 with Bhadgaon police station, District Jalgaon u/s 379,420,109 of I.P.C. against Nilesh Dnyaneshwar Desale and Vinod Bapurao Ahire for committing theft of sand and creating false receipts of payment of royalty/transport permission. It is alleged that for the purpose of transportation of sand, the vehicle in question was used. Due to this reason, police have seized said truck. The respondent No. 2 has defaulted in making payment of loan amount. The applicant has filed Arbitration proceeding against respondent No. 2. The Arbitrator has passed Award in favour of applicant to recover the outstanding loan amount against

respondent No. 2. The applicant has filed proceeding in the Court of the District Judge, Dhule for execution of Award. Since the vehicle is hypothecated with applicant by respondent No. 2 towards loan secured, the applicant moved an application u/s 257 of Cr.P.C. seeking custody of vehicle. The application was registered as Criminal Misc. Application No. 206/2016. Learned J.M.F.C., Bhadgaon vide order dated 25/01/2017 allowed the application and directed to hand over the interim custody of said truck to the applicant subject to certain conditions. Accordingly, the interim custody has been given to the applicant. Since the vehicle was lying idle and losing its utility and value, the applicant moved application seeking relaxation of condition not to alienate the property till disposal of criminal proceeding imposed vide Order dated 25/01/2017. The application came to be registered as Criminal Misc. Application No. 63/2017. The said application filed by applicant u/s 451 of Cr.P.C. seeking relaxation of condition rejected vide order dated 09/03/2018 by observing that no authority vests with the Court to grant such

permission to sell the vehicle given to the applicant by way of interim custody. Being aggrieved, the applicant has preferred this application.

6. Learned counsel for applicant submits that in terms of contract/agreement between the applicant and respondent No. 2, the applicant has initiated arbitration proceeding against the respondent No. 2, who defaulted in payment of loan amount. The Arbitrator has passed Award in favour of applicant. The applicant has filed execution and said proceeding is pending in the Court of District Judge, Jalgaon as Arbitration Darkhast No. 437/2016. It is submitted that vehicle in question seized in relation to offence of theft of sand by accused person. The said vehicle is not claimed to be property stolen in relation to commission of offence of theft. The loan was advanced to respondent No. 2 on hypothecation of vehicle with the applicant. In terms of deed of Hypothecation Agreement, the applicant is entitled to take physical custody of said vehicle and to sell the same towards recovery of outstanding loan due and

payable by respondent No. 2. It will take long time to decide the criminal proceeding. During the pendency of criminal case if the vehicle is kept idle, it will lose its value. In these peculiar facts and circumstances of the case, learned counsel urged to invoke the inherent jurisdiction of this Court u/s 482 of Cr.P.C. and allowed the applicant to sell the said vehicle towards realization of its due. In support of submission advanced, learned counsel has placed reliance upon the Judgment and order 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. opposed the application with

contention that the truck in question was seized in connection with offence of theft and same deserves to be preserved till conclusion of trial. It is submitted that as per the information received from Tahsildar, Bhadgaon, District Jalgaon, the vehicle in question was released on deposit of Rs. 40,200/- by respondent No. 2 the penalty imposed u/s 48 (7) of Maharashtra Land Revenue Code, 1966. The vehicle was released with condition that the vehicle shall not be used in commission of offence of similar in nature.

9. In my view, the applicant deserves to be permitted to sale the vehicle in question towards recovery of outstanding loan against respondent No. 2. 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 25/01/2017 passed in Criminal Misc.

Application No. 206/2016. Pursuant to the order dated 25/01/2017, interim custody of vehicle has been handed over to the applicant on execution of bond. After securing the custody of vehicle, the applicant moved application seeking relaxation of condition not to alienate the vehicle till conclusion of trial as imposed vide Order dated 25/01/2017. The application was presented on 12/05/2017 for relaxation of condition and permission to sale the vehicle by contending therein that huge amount of loan is outstanding against respondent No. 2. Respondent No. 2 has failed to pay the installments of loan secured from the applicant. It is contended that if the vehicle in question hypothecated with applicant remains idle, its condition will be deteriorated day by day. In that eventuality, it will cause serious financial loss to applicant. So also, the liability of respondent No. 2 would increase day by day. The learned Judge of trial Court has rejected the application by recording the reason that no authority vests with the Court to entertain such request in exercise of powers u/s 451 of Cr.P.C.

10. In my view the impugned order is not sustainable in law. The trial Court has wrongly refused to exercise the jurisdiction vested in it u/s 451 of Cr.P.C. to entertain such application. 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 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 and 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 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. "

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 order in respect of custody as well as disposal of property pending investigation or trial as the case may be.

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. The vehicle in question appears to be seized in the month of February, 2016. So also, same is not claimed to be property recovered as a stolen property in connection with the crime registered. The said

vehicle has been seized in relation to commission of offence of theft in respect of four Brass of sand. The vehicle was seized only for the reason same was used for transportation of theft article. The case has been registered against the driver of vehicle as well as one Nilesh Dnyaneshwar Bhosale who were found to be involved in commission of offence. The vehicle is admittedly owned by respondent No. 2 and hypothecated with applicant/Finance Company. The interim custody of vehicle has been ordered to be handed over to the applicant as per order dated 25/01/2017. The period of more than 3 years has lapsed from seizure of said vehicle. Keeping the vehicle idle would not serve any purpose. If the permission to sell the vehicle is not given, there is every likelihood that the vehicle in question may turn into scrap. The liability of respondent No. 2 to repay the loan amount is increasing day by day. If permission is granted to applicant to sell the vehicle and to retain the sale proceed subject to order passed by the concerned Court, the same would meet the ends of justice. In the result, the application

deserves to be allowed. Hence, the following order.

ORDER

- [i] The application is allowed in terms of prayer clause 'B'.
- [ii] The Order dated 09/03/2018 passed by learned J.M.F.C., Bhadgaon in Criminal Misc. Application No. 63/2017 is set aside.
- [iii] The application filed by applicant seeking relaxation of condition and permission to sell the vehicle i.e. Truck bearing No. MH-18-M-6713 is allowed subject to following conditions.
 - [a] The applicant shall file written undertaking in trial Court to the effect that applicant shall deposit the amount to the extent of amount received by sell of vehicle within four weeks if directed by the Court 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 within two weeks from the date of sell of vehicle and receipt of sale proceeds. 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.

16. Rule made absolute in above terms.

[V.L.ACHLIYA]
JUDGE

KNP.