

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HON'BLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.396 of 2019

M/s.Equitas Small Finance Bank Limited,
Rep. by its Branch Receivable Manager,
Mettupalayam Mr.V.Suresh,
Having Head Office at 4th Floor, Phase II,
Spencer Plaza, No.769, Mount Road,
Anna Salai, Chennai 600 002 ... Petitioner/Petitioner

Vs.

1. State rep by Inspector of Police,
Pudumandu Police Station,
Ootacamund,
The Nilgiris District,
(Crime No.40 of 2017) .. 1st respondent/ Complainant

2. Shakthivel

3. Kumar

4. Ravi .. Respondents 2 to 4 / Respondents/
Accused

5. Sarasu .. Respondents 5 / Respondent/Hirer

PRAYER: Criminal Original Petition filed under Section 482 of Cr. PC to set aside the all conditions imposed in the order passed in CMP No.4586 of 2017

in Cr.No.40 of 2017 dated 13.11.2018 on the file of the learned Judicial Magistrate, Ootacamund and allow the above Criminal Original Petition case.

For Petitioner : Mr.A.Damodaran

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor for R1

ORDER

This criminal original petition has been filed against the order passed by the Court below imposing certain conditions while allowing the petition for the return of the vehicle, filed by the petitioner.

2. The petitioner is a financier and the owner of the vehicle. The petitioner institution had financed the vehicle in favour of the 5th respondent who availed a loan facility. As per the hire purchase agreement, the petitioner continues to be the owner of the vehicle till the last instalment is paid.

3. The 1st respondent registered an FIR against respondents 2 to 4 in Crime No.40 of 2017 for an offence under Section 406, 420 IPC and the vehicle was also seized. The petitioner as the financier filed a petition for

return of vehicle before the Court below and the Court below allowed the petition by imposing certain conditions.

4. The learned counsel appearing for the petitioner would submit that the conditions imposed by the Court below runs against the dictum of the Hon'ble Supreme Court in the case of **[Sunderbhai Ambalal Desai Vs. State of Gujarat) reported in 2003 (1) CTC 175** and also the judgment of this Court in **[Sundaram Finance Limited Vs. The State of Tamil Nadu]** reported in **2011 1 MWN (Cri) 437**.

5. The learned counsel appearing for the petitioner by relying upon the above said judgement submitted that the Court below has virtually stopped the petitioner from selling the vehicle and therefore, the present petition has been filed seeking to modify the conditions imposed by the Court below.

6. The learned Additional Public Prosecutor representing the 1st respondent would submit that the petitioner had agreed to abide by any condition that may be imposed by the Court below and even in the petition filed before the Court below, the petitioner did not express its intention to

sell the vehicle and the petitioner merely stated that any condition imposed by the Court will be complied with by the petitioner. Therefore, the learned counsel would submit that the petitioner cannot now complain against the conditions imposed by the Court below.

7. This Court has carefully considered the submissions made on either side.

8. Admittedly, in this case the petitioner is a finance institution and it has financed the purchase of vehicle by the 5th respondent. The 5th respondent has not disputed the ownership of the vehicle and it is a settled law that the petitioner will continue to be the owner of the vehicle till the last instalment is paid. The only issue that needs to be examined in this case is whether the Court below was right in imposing the conditions that the petitioner should not sell or pledge the property and not alter the structure and colour of the vehicle and keep it in a good condition and produce the same, as and when required by the Court.

9. This Court had an occasion to deal with a case of this nature. The relevant portion of the judgment [**Sundaram Finance Limited Vs. The**

State of Tamil Nadu] reported in **2011 1 MWN (Cri) 437** is extracted hereunder :

10. This Court can do no better than reproduce the salient paragraphs in the judgement of the Hon'ble Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat, 2003 (1) CTC 175:

'3. At the time of the hearing of these matters, learned Counsel for the parties submitted that various articles are kept at the Police Station for a long period by not adhering to the procedure prescribed under Cr.P.C., which creates difficulties for keeping them in safe custody. Finally, the sufferers are – either the State exchequer or the citizens whose articles are kept in such custody. It is submitted that speedier procedure is required to be evolved either by the Court or under the rules for disposal of mudammal articles which are kept at various Police Stations as most of the Police Stations are flooded with seized articles. It is, therefore, submitted that directions be given so that burden of the Courts as well as at the Police Stations can, to some extent, be reduced and that there may not be any scope for misappropriation or of replacement of valuable articles by spurious articles.

4. Learned Counsel further referred to the relevant Sections 451 and 457 of the Code of Criminal Procedure, which read thus:

“451. Order for custody and disposal of property pending trial in certain cases.—When any property is produced before any criminal Court during any inquiry or trial, the Court may make such order as

it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.— For the purposes of this Section, ‘property’ includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property.—

(1) Whenever the seizure of property by any Police Officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such

proclamation.”

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.

6. It is submitted that despite wide powers, proper orders are not passed by the Courts. It is also pointed out that in the State of Gujarat there is Gujarat Police Manual for disposal and custody of such articles. As per the manual also, various Circulars are issued for maintenance of proper registers for keeping the mudammal articles in safe custody.

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 Panchnama 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.

8. The question of proper custody of the seized article is raised in a number of matters. In *Basavva Kom Dyamangouda Patil v. State of Mysore*, this Court dealt with a case where the seized articles were not available for being returned to the Complainant. In that case, the recovered ornaments were kept in a trunk in the Police Station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the

Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a Criminal case, the Police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the Police Officers in every case where it has taken cognizance.”

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451, Cr.P.C. should be exercised promptly and at the earliest.

15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the Police Station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned Counsel appearing for the Petitioners

submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

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 panchnama should be prepared.

24. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where Accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before

the Court and the Seizure Report may be sufficient. The Special Leave Petitions are disposed of accordingly.'

11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This Court expresses a sincere hope that atleast hereinafter the Criminal Courts would follow the decision of the Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat, in true letter and spirit.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it.

Upon production, the lower Court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The Petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.

10. From the above judgment, it is clear that this Court after following the judgment of the Hon'ble Supreme Court has categorically held that return of vehicle and permission for sale of vehicle should be the general norm rather than the exception. This Court has further observed that in cases where return of vehicle is sought for, where there is no contest regarding ownership over the vehicle, the Court has to fix a date for the production of the vehicle before it and upon production, the Court has to cause photographs of the vehicle to be taken and record panchnama thereof. Thereafter, the owner of the vehicle should be permitted to effect sale of the vehicle and panchnama prepared should be read as evidence in lieu of marking of the vehicle.

11. The Court below would have followed these judgements if only the petitioner had informed the Court below that he must be permitted to sell the vehicle. However, the petitioner did not express his mind to sell the vehicle before the Court below. Therefore, the Court below has proceeded

to impose the regular conditions against the petitioner. Only before this Court, the petitioner has clearly expressed his mind to sell the vehicle.

12. In view of the above, the petitioner is directed to produce a certified copy of this order before the Court below and the Court below on production of the order, shall fix a date for production of the vehicle before it and upon production, the Court below shall follow the procedure as stipulated in *[Sundaram Finance Limited Vs. The State of Tamil Nadu]* and permit the petitioner to sell the vehicle. This Criminal Original Petition is disposed of accordingly.

08.01.2019

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Internet : Yes

Index : Yes

Speaking / Non Speaking Order

To

1. The Judicial Magistrate,
Ootacamund
2. The Public Prosecutor,
High Court of Madras.

N. ANAND VENKATESH , J.

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