

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

CRIMINAL APPLICATION NO. 2962 OF 2022

Equitas Small Finance Bank Limited
Through its Branch recovery Manager &
Special Power of Attorney Holder
Bharat Bhimaji Landge .. Applicant

Versus

The State of Maharashtra and another .. Respondents

Mr. Sachin S. Panale, Advocate for the Applicant.
Mr. S. R. Yadav-Lonikar, APP for Respondent No. 1.

CORAM : KISHORE C. SANT, J.

DATED : 23rd FEBRUARY, 2023.

P. C. :-

. Heard learned advocates for both the parties.

2. Though respondent No. 2 is served, none appeared as he is in sub jail in connection with the offence out of the present application is filed.

3. The applicant is a Finance Company and advanced loan to respondent No. 2 for purchasing a vehicle namely Maruti Swift Dzire bearing No. MH-17-AW-6699 Model 2013 having Chasis No. MA3FJEB1S00320718 and Engine No. D13A2142687. The said vehicle was given on hypothecation basis where the ownership is

retained by the Finance Company and the person using the vehicle becomes the owner only after repayment of the loan amount. The respondent No. 2, however, was found committing an offence by the use of the car/vehicle and he was arrested for the offence punishable under Sections 395, 394, 458 r/w Section 34 of the Indian Penal Code. Since the date of seizure, the vehicle was lying with the police.

4. The applicant being owner of the vehicle filed an application under Section 457 of the Code of Criminal Procedure in the Court of learned J.M.F.C., Court No. 1, Shrirampur bearing Criminal M. A. No. 39/2022. The learned Trial Court was pleased to direct to hand over the possession of the vehicle in favour of the applicant by order dated 21.03.2022, however, while releasing the vehicle a condition is imposed that the applicant shall not create third party interest either by way of sale, mortgage etc. without prior permission of the Court. The applicant is aggrieved by this condition and filed Criminal Revision Application No. 14/2022 in the Court of learned Sessions Judge, Shrirampur. It is the specific contention of the applicant that, it is engaged in the business of finance and as such, the vehicle which is given on finance, it is of no use and therefore sought relaxation of that condition. The Revisional Court, however, by judgment and order dated 25.07.2022 dismissed the revision application. Therefore, the applicant

is before this Court.

5. Learned advocate for the applicant submits that, keeping the vehicle as it is, is of no use. Though the possession is with the applicant, it is not in use. Keeping the vehicle as it is would only further damage the vehicle. He is ready to abide by the conditions if any imposed by this Court, if permission to sale is granted. He relies upon the judgment of this Court in a case of **Tata Motors Finance Ltd. Vs. The State of Maharashtra and anr.** reported in **2018 ALL MR (Cri) 636** wherein, this Court was pleased to allow the petition and order passed by the learned J.M.F.C. refusing to sale the vehicle is set aside. The vehicle was allowed to be auction sold and the sale process was directed to be keep by the petitioner in a separate account. The petitioner was directed to give undertaking to that effect. He further relies upon the judgment passed by this Court in Criminal Application No. 7178 of 2017 in a case of **Cholamandalam Investment & Finance Co. Ltd., Vs. The State of Maharashtra and anr.** dated 13.02.2018 wherein, this Court had partly allowed the application by imposing following conditions.

“13. Considering the above referred facts, in my opinion, there is no reason to take a different view than the view taken by learned Single Judge of this Court in the matter of **M/s. Shriram Transport Finance Co. Ltd.** (supra). Resultantly, the application is partly allowed. The order passed learned

Magistrate dated 26th October, 2017 in Criminal Misc. Application No. 400 of 2017 is modified in view of condition No.2(a). The said condition is deleted and same is substituted by following conditions.

(a) The photographs of the seized vehicle taken by the Investigating Officer shall be used as secondary evidence during the trial and, therefore, physical is dispensed with.

(b) The applicant is permitted to sell the vehicle by auction. Before auctioning off the vehicle, the applicant shall get the vehicle valued by recognized Government Valuer and the Valuation Report shall be submitted to the trial Court. The details of the auction and auction proceedings shall be submitted to the trial Court.

(c) The applicant shall submit an indemnity bond, stating therein, that the applicant shall remit the proceeds from the sale of the vehicle conducted through auction by the applicant to such party as may be directed by the Court. The applicant shall also submit an undertaking within two weeks from the date of the order to the effect that in the event the ownership of vehicle is found to be vested with the accused persons, the sale proceeds of the vehicle shall be deposited by it in the trial Court or shall be paid by it in terms of the order to be passed in that regard by the trial Court.

(d) Respondent No.2 is also entitled to bring the purchaser. The applicant shall sell the said vehicle to the highest purchaser. The amount received from the sale of said vehicle shall be kept by the applicant in a separate account.

(e) The parties are entitled to put forth their respective stand in respect of the said amount and its entitlement according to the provisions of law at the time of final disposal of the complaint.”

6. Learned advocate for the applicant thus prays that application be allowed and permission be granted to sale the vehicle in question.

7. The learned A.P.P. opposes the application stating that the vehicle is seized in a crime and is a Muddemal. The Court may require it at any stage for evidence or any other purpose. If the vehicle is sold, it would be difficult to procure for the same if required for the purpose of trial.

8. Considering both the arguments, this Court finds that, considering the fact that, applicant is a Finance Company, it is no use keeping the vehicle in their custody. If the vehicle is sold, the company can be directed to keep the proceeds in a separate account till the trial is over or till such time the Trial Court deems fit. The photographs of the vehicle can be taken as directed by this Court in Criminal Application No. 7178/2017. The applicant shall file an undertaking to that effect in this Court within a period of two (02) weeks from today. An undertaking is already given by the applicant while releasing the vehicle. The same shall continue.

9. Learned advocate for the applicant submits that, he has instructions to give an oral undertaking on behalf of his client that he shall not utilize the amount of process of the vehicle and will keep that in a separate account. With this, this Court finds that, application needs to be allowed. Hence, the following order.

10. The criminal application stands allowed.

11. The condition imposed by the learned J.M.F.C. i.e. condition No. (3) in the order dated 21.03.2022 is quashed and set aside. The applicant is at liberty to sale the vehicle with the condition that, the applicant shall keep the proceeds thereof in a separate account subject to further orders of the Trial Court. The applicant shall take photographs sufficient enough to prove the identity of the vehicle and deposit the same with the Court.

12. With this, the criminal application stands disposed off.

(KISHORE C. SANT, J.)

P.S.B.