

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3623 of 2014

L & T Finance Limited

-Vs-

The State of West Bengal and Anr.

For the Petitioner : Mr. Dipanjan Dutt
Mr. Amitava Mitra
Ms. Surojit Saha
Ms. Antara Choudhury

For the State : Mr. Avishek Sinha

Heard on : 12.10.2023, 19.02.2024, 07.03.2024,
13.06.2024

Judgment on : 19.09.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the order dated 29.01.2014 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, in G.R. Case No. 400 of 2013 arising out of Electronic Complex Police Station Case No. 39/13 dated 22.04.2013 under Section 406/420/403/120B/34 of the Indian Penal Code whereby rejected the prayer of the petitioner for return of 4 vehicles belonging to and charged to the petitioner and lying in the custody of Electronic Complex Police Station under the Bidhannagar Police Commissionerate.

2. The aggrieved petitioner contended to be engaged, in the business of financing for vehicles and other moveable assets and granting credit facilities to the constituents, having their registered office and one of the local branch office situated at the addresses furnished in the cause title. The Petitioner Company is being represented by Sri Kazi Mazharul Islam, who had been duly authorized to represent the petitioner company and to file the present application before this Hon'ble Court on behalf of the petitioner company.
3. Saradha Construction Company Private Limited (hereinafter referred to as 'Saradha Construction'), approached the petitioner seeking financial assistance for the purpose of purchasing 20 Numbers of Mahindra Scorpio Car, 12 Numbers of Maruti Omni Vans and 2 numbers of Soil Compactors.
4. On September 28, 2012, the petitioner and Saradha Construction entered into an agreement at Kolkata, whereby and where under the applicant agreed to grant credit facilities to Saradha Construction to the extent of a sum of Rs.1,97,34,000/- (One Crore Ninety Seven Lakh and Thirty Four Thousand) only, which sum was required to be repaid together with interest in 23 equated monthly installments @ Rs.9,84,985/- each.
5. Saradha Realty India Limited (hereinafter referred to as 'Saradha Reality') guaranteed the performance and observance of the credit facilities granted to Saradha Construction and duly executed a Deed of Guarantee.
6. The applicant entered into another agreement with Saradha Construction in which Sudipta Sen, son of Nripendra Narayan Sen, was the Guarantor, whereby the applicant agreed to grant credit facilities to Saradha

Construction for the purpose of purchasing two (2) numbers of vehicles under Hypothecation Agreement bearing Deal no. 948147 comprising of Schedule Nos. EFD016012R1200548088 AND EFD016012R1200548089 dated 28.08.2012.

7. Each of the aforesaid agreements, inter-alia, provides that the assets purchased through the credit facilities, granted by the applicant, would remain charged with the applicant. The applicant would have first and exclusive charge, by way of hypothecation, of such assets and such security shall be continuous security. The agreement further provides that in the event of default in payment of any installment or any part or portion thereof, the applicant would be entitled to take possession of such hypothecated assets.
8. Each of the aforesaid agreements also contained an arbitration clause whereby and whereunder, the parties were required to refer all disputes arising out and in connection with the said agreement to arbitration, in accordance with the provisions of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the said Act').
9. Saradha Construction defaulted in making payment of the installments in terms of the aforesaid agreements.
10. The petitioner learnt that an investigation had been initiated by the Government of West Bengal and Investigators had been appointed, who are probing the accounts of Kolkata- based Saradha Group. Preliminary investigations have, reportedly unearthed a complex web of transactions

among various group companies, increasing the magnitude of the task facing regulators as they attempt to unravel the alleged scam and making it harder to compensate investors as some of the companies appear to have little by way of assets. It had also been reported that the West Bengal Unit of the Registrar of Companies (RoC) had unearthed a pattern of circular transactions Essentially grouped Companies lend money to each other; this group companies being Saradha Realty Pvt. Ltd., Saradha Construction Company Pvt. Ltd., Devkripa Vyapaar Pvt. Ltd., Bengal Media Pvt. Ltd. and Bengal Awadhoot Agree in 2011-12. These dealings, in the opinion of the RoC, were “ostensibly to create a maze of financial transaction to cover up the financial mess”. The RoC report, which was received by the Ministry of Corporate Affairs (MCA) revealed irregularities in the accounts of all Saradha Group companies and recommended an investigation in the matter. The same, it is submitted, had been widely reported in the media through the country and, in fact, throughout the world.

11. The Petitioner Company, therefore, in the facts and circumstances aforesaid, became entitled, in terms of clause 12.1, 12.6 and clause 13 of the said Loan cum Hypothecation agreement dated September 28, 2012, to terminate the said Agreement dated September 28, 2012 and to take immediate possession of the said assets. Upon termination of the Agreement, petitioner also became entitled to recover from the borrower, inter-alia, all future installments for the unexpired period of the agreement etc.

12. In view of defaults committed by the borrower in complying with their contractual obligations, by a notices dated May 06, 2013 and May 18, 2013, the petitioner had terminated the Loan-Cum- Hypothecated agreement dated August 28, 2012 and September 28, 2012, recalled the loan and demanded payment of a sum of Rs. 28,68,000/- and Rs.1,31,80,898/-. The said notice was issued by the Petitioner from the jurisdiction of this Hon'ble Court.
13. In the circumstances, as calculated up to November 26, 2014, a sum of Rs.1,89,39,150.00/- is due and payable by Saradha Construction Company Private Limited to the appellant, in terms of the agreements dated September 28, 2012 and August 28, 2012, as per the particulars given below:-

PARTICULARS

Saradha Construction Co. Pvt. Ltd. (Deal No. 964576)	
26.11.2014	
Schedules Nos.	Total (I to XXXII)
Balance of 6 th installment fell due on 15.04.2013	6,26,110/-
Arrears of 7 th to 23 rd installments which fell due during the period from 15.05.2013 to 15.09.2014	1,10,96,535/-
Overdue charges	38,60,939/-
Cheque bouncing and other charges	7900/-
Future loan installments	0.00/-
Total Outstanding	1,55,91,484/-

Saradha Construction Co. Pvt. Ltd. (Deal No.948147)	
26.11.2014	
Schedules Nos.	Total (I & II)
Arrears of 8 th to 26 th installments which fell due during the period from 15.05.2013 to 15.11.2014	18,46,515/-
Overdue charges	5,22,064/-
Cheque bouncing and other charges	1,04,422/-
Future loan installments	8,74,665/-
Total Outstanding	33,47,666/-
Grand Total	1,89,39,150/-

14. It was under these circumstances, the Petitioner filed two separate proceedings under Section 9 of the Arbitration & Conciliation Act, 1996 before this Hon'ble Court which was registered as A.P No. 643 of 2013 and A.P. No. 598 of 2013. Orders were passed in the said proceeding from time to time. An Advocate of this Hon'ble Court was appointed Receiver in both the proceedings with a direction to take possession of all the assets which

included 32 vehicles in terms of the agreement dated 28th September, 2012 and 2 Numbers of Compactors in terms of the Agreement dated 28th August, 2012.

15. Pursuant to and in terms of the orders passed by this Hon'ble Court in the said proceedings, the Receiver could take possession of only two vehicles, one Mahindra Scorpio Car and one Maruti Omni Van which were the subject matter of A.P. No. 643 of 2013.
16. Petitioner had also taken steps in the meantime to refer the disputes to the Learned Arbitrator appointed in terms of the said agreements. Petitioner states that the said adjudication proceeding had also been culminated to two awards. Petitioner craves leave to produce & rely upon the relevant documents pertaining to the said Arbitration Proceeding at the time of hearing, if necessary.
17. The Learned Receiver, with the assistance of the applicant, located 16 out of total 34 assets. Out of the 16 assets, being different make & model of motor vehicles 14 were found in the custody of the Police authorities. Only two vehicles being a Scorpio and Maruti Van could be seized by the Learned Receiver which, subsequently, pursuant to the orders of this Hon'ble Court was sold. In spite of request being made, the police authorities refused to release the other vehicles seized by them.
18. The police authorities had informed the applicant that pursuant to and in terms of the order passed by the one Hon'ble Justice, Commission of Enquiry, none of the assets including vehicles over which the applicant had

charge and which are the subject matter of the agreement with the applicant, could be released. It is under these circumstances, the applicant, by a letter dated November 1, 2013, wrote to the Justice Shyamal Kumar Sen Commission of Enquiry, informing the Commission of the proceeding initiated by this Hon'ble Court and the orders passed therein. The Commission was, inter-alia, requested to direct all concerned authorities to release the vehicles to the Learned Receiver appointed by this Hon'ble Court.

19. In spite of petitioner's letter dated November 1, 2013, the Commission failed to respond or consider the request made by the applicant, till date.
20. After considering the report of the Learned Receiver, by an order dated November 26, 2013 in A.P. No. 643 of 2013, the petitioner was given liberty to liaison with the police authorities in connection with the investigation into the Saradha matter. Liberty was also given to the petitioner to apply afresh. Similarly, in A.P. No. 598 of 2013, by order dated December 17, 2013, this Hon'ble Court was pleased to give liberty to the petitioner therein to approach the Police Authorities or the relevant Criminal Court in session over the matter for obtaining release of the assets in accordance with law.
21. The applicant received a letter from the Directorate of Enforcement dated November 29, 2013. The petitioner was called upon to provide details of the registration number and particulars of the vehicles financed by the applicant to Saradha Group of Companies. The applicant by their letter dated December 6, 2013, duly replied to the said notice and provided all

particulars and details of the vehicles financed and hypothecated with the applicant.

22. The aforesaid vehicles were purchased by Saradha Reality and Saradha Construction out of the funds advanced by the petitioner company under the said two loan agreements. The said Companies, with the assistance of the credit facilities advanced by the petitioner company, purchased the said vehicles. The said vehicles all along remained hypothecated and the petitioner had and still had paramount charge over and in respect of such vehicles. None of the aforesaid vehicles were purchased by the funds of the investors or from the money collected by Saradha Group Companies under the Investment Schemes which are the subject matter of the Electronic Complex Police Station Case No. 39/13 dated April 22, 2013.
23. The petitioner stated that four vehicles out of total 16 vehicles were lying in the custody of the Police Authorities since April - May, 2013, upon seizure of the same, in connection with Electronic Complex Police Station Case No. 39 dated 22.04.2013. The petitioner stated that criminal procedural law, relating to investigation by Police Officers did not envisage seizure of moveable or immovable property for an indefinite period. It is apparent that the assets have been seized merely on the apprehension that the same belongs to and/or owned by Saradha Group Companies and possession of the same had been retained indefinitely contrary to criminal procedural law relating to investigation.

24. Subsequently, it appeared that detective department of Bidhannagar Police commissionerate had filed charge sheet under section 173 Cr.P.C., on July 16, 2013 vide charge sheet no. 50 in the said E.C. P.S. Case No. 39 dated 22.4.2013.
25. The petitioner stated that each of the aforesaid vehicles had been purchased out of the funds advanced by the petitioner and all such vehicles were hypothecated and/or charged with the petitioner. As such, the said vehicles could not be seized and/or treated as 'Alamat' of the case inasmuch as the same had no nexus or remote connection with the allegations in the First Information Report of Electronic Complex Police Station Case No. 39/13 dated April 22, 2013.
26. It was under these circumstances, the petitioner Company filed an application on January 15, 2014 before the Court of the Additional Chief Judicial Magistrate, Bidhannagar in connection with Electronic Complex Police Station Case No. 39/13 dated April 22, 2013, praying inter-alia, for a direction upon the Learned Magistrate for return of the said four vehicles, details of which would appear from the Schedule - I of the said application.
27. In course of hearing of the petitioner's application it was submitted by the Learned Special Public Prosecutor appearing on behalf of the State that this Hon'ble Court had been pleased to pass an order in connection with another Writ petition filed in connection with Saradha Group Companies and in terms of the orders passed therein, there is no scope for passing any order for release of the seized vehicles. The Investigating Officer also filed a report

and objected to the return of the seized vehicle allegedly on the ground that the matter relating to disposal of assets belonging to Saradha Group Companies is pending before Hon'ble Justice Shyamal Sen Commission of Enquiry.

28. The Learned Additional Chief Judicial Magistrate Bidhannagar, upon hearing both the parties, came to a purported finding from the records that the seized vehicles are the 'Alamat' of the case and the case of the prosecution would stand frustrated if the vehicles are returned to the petitioner at this stage. Accordingly, the petitioner's prayer was rejected.
29. The Ld. Advocate for the petitioner stated that subsequent to the application being filed and the impugned order being passed, the tenure of the Hon'ble Judge, Commission of enquiry expired due to efflux of time with effect from October 23, 2014. No fresh notification had been issued by the State of West Bengal extending the period of the Commission.
30. In the circumstances, there was no impediment in any manner whatsoever in releasing the seized asset in view of pendency of the enquiry before the Hon'ble Justice, Commission of Enquiry.
31. The Learned Advocate for the petitioner further submitted that the Hon'ble Constitutional Courts had taken judicial notice of the fact that when vehicles were seized and kept in a police station, not only do they occupy substantial space in the police stations but upon being kept in open, were also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it was kept stationary in the police station

for more than fifteen days. Apart from the above, it was also a matter of common knowledge that several valuable and costly parts of the said vehicles were either stolen or were cannibalised so that the vehicles become unworthy of being driven on road.

32. Heard the arguments submitted by the Learned Advocate of the petitioner and the Learned Advocate for the State,
33. Section 451 of the Code of Criminal Procedure states as follows:-

“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.”

34. Section 452 of the Code of Criminal Procedure states as follows:-

“Order for disposal of property at conclusion of trial - (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence

appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without securities, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

35. In **Sunderbhai Ambalal Desai v. State of Gujarat**¹, the Hon'ble Supreme Court observed that:-

¹ (2002) 10 SCC 283

“7. In our view, the powers under Section 451 CrPC 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 [(1977) 4 SCC 358 : 1977 SCC (Cri) 598] 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: (SCC p. 361, para 4)*

“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.”.....

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.*

19. *For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.*

20. *Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a*

contention may not be raised that the article which was seized was not the same.

21. *However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”*

36. In **General Insurance Council v. State of A.P.**²: at the Hon'ble Supreme Court held the following:-

“13. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai (2002) 10 SCC 283 2003 SCC (Cri) 1943) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

² (2010) 6 SCC 768

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

37. Considering the aforesaid provisions and the citations, the vehicles seized during the pendency of the proceedings can be released to the petitioner insurance company on production of valid documents and subscribing to requisite legal formalities.

38. The Learned Trial Court is to release the seized 4 (four) vehicles in favour of the petitioner after taking photographs of the same duly authenticated and certified and a detailed panchnama/inventory should be prepared before such release.

39. The photographs so taken may be considered as evidence during trial to dispense with the physical production of the vehicle. The petitioner company shall be directed to submit an undertaking/guarantee to remit the proceeds from the sales/auction of the vehicle conducted by the petitioner in the event the Learned Trial Court finally adjudicates that the rightful ownership of the vehicle does not vest with the petitioner.

40. In view of the above discussions, the order dated 29.01.2014 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, in G.R. Case No. 400 of 2013 arising out of Electronic Complex Police Station Case No. 39/13 dated 22.04.2013 under Sections 406/420/403/120B/34 of the Indian Penal Code whereby rejected the prayer of the petitioner for return of 4 vehicles belonging to and charged to the petitioner and lying in the custody of Electronic Complex Police Station under the Bidhannagar Police Commissionerate is quashed.
41. Under such circumstances, the instant criminal revisional application being CRR 3623 of 2014 is allowed.
42. Accordingly, CRR 3623 of 2014 stands disposed of.
43. There is no order as to costs.
44. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
45. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)