

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL)
NO. 3413 of 2022**

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S K FINANCE LTD THRO AQIBAHMED KADRI S/O VAKARAHMED KADRI
Versus
STATE OF GUJARAT

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Appearance:

MR.KISHAN PRAJAPATI(7074) for the Applicant(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 3
MS ASMITA PATEL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 30/01/2024
ORAL ORDER

1. **RULE.** Learned Additional Public Prosecutor waives service of notice of rule for and on behalf of respondent-State.
2. The applicant-finance company has preferred this petition challenging the orders passed by the Courts below, by which the prayer for handing over the vehicle in question and permission to sell it has been turned down by the trial Court as well as revisional Court.
3. Pursuant to the FIR being C.R. No.11186008210179 of 2021 registered with Una Police Station, District: Gir-Somnath for the offence punishable under Sections 6(A)(1), 6(1)(3) and 8(4) of the Gujarat Animal Preservation Act, 1954 and Sections 11(1)(d), 11(1)(e) and 11(1)(f) of Animal Cruelty Act, the vehicle in question which was allegedly used for transporting the animal for slaughter purpose was seized by the investigating agency. The seized vehicle is Mahindra Bolero

Pick-up bearing registration no.GJ-14-X-6578. The applicant company had sanctioned the loan on the vehicle to the tune of Rs.6,29,977/- and as per the hypothecation agreement, the vehicle remains as a security (HPA) in the name of company and same is registered with the R.T.O. and as per the agreement, if the party makes default in paying the installment, the company is entitled to get the custody of the vehicle with a right to sell it to recover the outstanding. In the facts of present case, the private respondent failed to repay the loan amount. The applicant-company applied before the Court for taking interim custody of the vehicle. The learned trial Court considering the embargo of Section 6(A)(4) of Gujarat Animal Preservation Act, has rejected the prayer for interim custody and the revision filed against the order also came to be dismissed on the same ground.

4. In the aforesaid facts, the applicant company is before this Court seeking interim custody of the vehicle with permission to sell.

5. This Court has heard learned counsel Mr. Kishan Prajapati for the applicant and learned Additional Public Prosecutor Ms. Asmita Patel for the respondent-State.

6. Upon instructions, the State counsel has fairly stated that, till date the vehicle in question is not forfeited to Government as provided under Section 6(A)(4) of Gujarat Animal Preservation Act.

7. The respondent no.2, who has purchased the vehicle has no objection if the vehicle is handed over to the applicant-

company. The affidavit to this effect filed by the respondent no.2 is ordered to be taken on record.

8. Having regard to the facts and circumstances of the present case and delay in complying Section 6(A)(4) of the Act and considering the ratio laid down in the case of *Sunderbhai Ambalal Desai (AIR 2003 SC 638)*, this Court is of view that, the case is covered by the judgment of this Court passed in Special Criminal Application No.2538 of 2014. Para-16 of the said judgment reads as under:

"16. In such circumstances, I am of the view that the vehicle should be handed over to the finance company and the company should be permitted to sell the vehicle subject to certain terms and conditions. In this context may quote with profit a decision of the Supreme Court in the case of General Assurance Counsel and others v. State of A.P. And others, 2010 AIR SCW 2967. The Supreme Court has made the following observations in paragraph Nos. 14 and 15 which reads as under:-

*"14. 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 (Supra)* 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 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 panchamama may be prepared before such release.

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

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of 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 road worthiness 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 stations especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district."

17. The respondent No.2 has not yet become the absolute owner of the property as he is obliged to pay the loan amount. Even as per the RTO records, the ostensible ownership is with the applicant company."

9. Resultantly, case is made out to exercise inherent jurisdiction of this Court to quash the orders passed by the Courts below and in the interest of justice, the prayer to grant interim custody of the vehicle in question with permission to sell it, is allowed.

10. In the result, this petition is allowed. The order dated 19.06.2021 passed by learned Additional Chief Judicial Magistrate, Una and the order dated 28.10.2021 passed by learned Additional Sessions Judge, Gir Somnath-Una in Criminal Revision Application No.27 of 2021 are hereby quashed and set aside. The concerned Police Station shall handover the possession of the vehicle to the petitioner at the earliest. It shall be open for the petitioner company to sell the Mahindra Bolero Pick-up bearing registration No.GJ-14-X-6578, after executing a bond in the sum of the amount of sale consideration before the trial Court. The petitioner is at liberty to dispose of the vehicle in question after following the necessary procedure prescribed in law for the transfer of vehicle i.e. after drawing panchnama and taking photos of the vehicle. The petitioner shall intimate the trial Court about the sale consideration received by it. The petitioner shall also file an undertaking before the trial Court that the petitioner shall deposit the entire sale proceeds in the Court if required/ordered by the Court at the end of the trial. Rule is made absolute. Direct service is permitted.

(ILESH J. VORA,J)

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