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**(1989) 08 GUJ CK 0014**  
**In the Gujarat High Court**

Hussain Amibhai Qureshi

APPELLANT

Vs

Nyaj Mohmed Badankha Babi and Another

RESPONDENT

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**Date of Decision :** 28-08-1989

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 156(3)

**Citation :** (1990) 2 GLR 1035

**Hon'ble Judges :** R.A. Mehta, J

**Bench :** Single Bench

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**Judgement**

R.A. Mehta, J.—This revision application by the original complainant is directed against an order regarding disposal of the muddamal truck. It is directed to be handed over by the Sessions Court to the original accused who has been acquitted.

2. In the memo of revision application, it has been pointed out that the trial Court had directed the custody of the truck to be given to the petitioner-complainant and was actually given to the petitioner-complainant on furnishing a bond. It is also pointed out in para 4 of the memo of revision that on 12-3-1981, the truck was involved in a fire and was burnt to ashes. However, this fact was not pointed out to the lower appellate Court namely the Sessions Court at Mehsana. It is not shown whether there is any insurance claimed and whether there is any payment by the insurance company. In any case, the petitioner has given a bond while taking the custody of the truck and that bond would now remain the subject matter for the purpose of this revision application.

3. It is an admitted position that the petitioner-complainant had agreed to sell the truck to the accused on 8-3-1979. It was agreed to be sold for a sum of Rs. 50,000/- and a sum of Rs. 4,500/- was paid and the possession of the truck was handed over to the accused. It was the say of the petitioner that the balance amount was to be paid within a month and as that amount was not paid, the petitioner-complainant felt cheated and he filed a complaint for cheating and criminal breach of trust. During the course of the investigation, the truck was

attached and seized. By an order dated 30-10-1979, the learned trial Magistrate, Visnagar directed the police to hand over the truck to the petitioner-complainant on executing a bond. Thereafter, the opponent-accused was tried and was acquitted on the ground that the dispute was of a civil nature. The learned trial Magistrate also held that the opponent-accused had not become the owner of the truck and therefore he was not entitled to possession of the truck and he passed an order for retaining possession of muddamal truck with the petitioner. The accused preferred Criminal Appeal No. 22 of 1981 in Sessions Court. Mehsana and the same was allowed and the truck was directed to be handed over to the accused.

4. In the present revision application, the learned Counsel for the petitioner has submitted that he is the registered owner of the truck and therefore has better and superior title than that of the accused and therefore he should be allowed to retain the possession of the truck. He has submitted that for a valued at Rs. 60,000/-, he was paid only Rs. 4,500/- and nothing has been paid thereafter. It is also submitted that the original accused has already expired and the heirs are not entitled to return of the muddamal truck. It is also submitted that the muddamal truck is no longer in existence and therefore it cannot be returned.

5. It is to be noticed that even though the petitioner is the registered owner of the truck, he has voluntarily and lawfully parted with the possession and put the accused in possession of the truck in pursuance of an agreement to sell and that he had received part of the consideration being Rs. 4,500/-. As far as the criminal charges of cheating and criminal breach of trust are concerned, the Criminal Court has acquitted the accused and dismissed the complaint. In such circumstances, if the complainant is allowed to retain the truck with him, it would amount to allowing the complainant to abuse the process of the Criminal Court. The Criminal Court is not expected to deal with the civil rights of the parties, more so, when the complainant has failed in the criminal case. In such case, the complainant cannot by-pass the Civil Court and obtain the possession of the muddamal truck through Criminal Court. It is not in dispute that the petitioner-complainant had voluntarily and lawfully put the accused in possession of the truck and that the accused had also paid a sum of Rs. 4500/- for the same. On behalf of the accused, it was also submitted that he had spent about Rs. 2200/- after repairs of the truck before it was attached and seized. The Criminal Court was not required to go into the question of title and ownership. It was required to see who had the right to possession.

6. The facts of this case are directly covered by the judgment in the case of Thakkar Mahendraprasad Bapalal v. State of Gujarat and Anr. 1985 GLR 61 in which it was held as under:

The learned Magistrate has relied on the judgment in the case of Nandiram alias Nandumal Parumal v. State of Gujarat and Ors. 7 GLR 866. In that judgment, the Court observed that the registered owner would be entitled to remain in custody and not any other person unless he is able to establish his superior title or claim

over it. In the present case, the registered owner had the title and also the authority to transfer the title and possession and he has voluntarily and lawfully exercised that authority and transferred possession for valuable consideration, and therefore, the present petitioners were in lawful possession of the said trucks since the dissolution of the firm by the deed 15th April 1983. The complaint was filed on 19th October 1983 and the trucks were seized on 25th October 1983. The complaint filed on 19th October 1983. The complaint is based on the allegation that the petitioners had promised regular payment of instalments and thereby the complainant was induced to part with possession of the said trucks and by not keeping their promise the petitioners have committed the offence of cheating in that complaint, the learned Magistrate has passed an order for inquiry u/s 156(3) Criminal Procedure Code and it appears that till today, the Police has not submitted a report or chargesheet against the present petitioners. In Special Criminal Application No. 47 of 1983, I had an occasion to consider the judgment in the case of Nandiram (*supra*). The facts of that case showed that the petitioner had been put in lawful possession by the registered owner himself and the petitioner in that case also paid substantial amount and therefore the petitioner transferee was held entitled to possession as against the registered owner.

xxx xxx xxx In view of the aforesaid discussion, the learned Magistrate was clearly in error in directing to hand over interim custody and possession of the muddamal trucks which were seized from the present petitioners to the complainant. The petitioners have been lawfully and voluntarily put into possession and custody of the trucks by the complainant-opponent No. 2 himself.

In view of this legal position, the contention of the petitioner for retaining the custody of the muddamal truck must fail.

7. It is submitted that the truck is no longer in existence and therefore it cannot be directed to be returned. It is to be noticed that while the custody of the truck was disposed of in favour of the petitioner by the trial Court, it was on the basis of the bond given in the trial Court. Therefore that bond will have to be enforced in lieu of the truck. The petitioner has not disclosed as to the extent of damage to the truck and whether it still exists or not by producing on record of the R.T.O., nor the petitioner has shown as to whether he has made any insurance claim or he has received any insurance claim. In any case, since the board has been taken from him, that bond will have to be enforced in lieu of the truck if the truck is not available.

7.1. It is also contended that the heirs of the accused are not entitled to be given the custody of the truck and enforce the bond. The rights regarding the disposal of muddamal are property rights and the proceedings are of a civil nature even though arising in a criminal case, and in such a case, when a person-whether complainant or accused becomes entitled to disposal of muddamal property, such property right survives to the heirs and the heirs are entitled to claim the same. In the present case, the heirs of the accused have come on record and contested

the claim of the petitioner. The petitioner cannot get the benefit out of death of the opponent and retain the illegal custody of the truck.

8. In the result, the revision application fails and is dismissed. Rule discharged. Interim relief vacated. The petitioner is directed to return the custody of the truck to the heirs of the original opponent No. 1 who have come on record. In case the truck is not available or is not in a condition for return as per the bond, the bond executed by the petitioner in the trial Court shall be enforced. The trial Court is directed to take steps for executing this order.