(2007) 02 GUJ CK 0034

In the Gujarat High Court

Case No : Special Criminal Application No. 323 of 1997

Jitendra Mohanlal Jayswal — APPELLANT

Vs

Inspector of Motor Vehicles and Others — RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:
Motor Vehicles Act, 1988 — Section 207, 207(2), 39, 55, 55(5)

Citation : (2007) 02 GUJ CK 0034

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Ramkrishna B. Dave, for the Appellant; SS Patel, Addl Public Prosecutor for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—The petitioner has prayed for a declaration that the seizure and detention of his vehicle bearing No. GTX-3219, an omnibus, by respondent authorities under the Motor Vehicles Act was illegal and for the consequent direction to release the vehicle. Admittedly, the vehicle was checked on 20.12.1996 at around 10.00 a.m. on Sanand - Viramgam Road and detained thereafter on the grounds of doubtful registration and revelation that original documents of the vehicle were not produced, registration number was not painted on both sides and chassis number and engine number of the vehicle were not tallying with those mentioned in the copies of the papers of the vehicle.

2. According to the petition itself, the petitioner had changed the chassis without obtaining approval of or notifying it to the registering agency. The chassis found in the said vehicle bore the numbers which were the chassis number of another bus of one Shri Kirtikumar Pranlal Jaiswal and that bus bore registration No. GJ-1-T-5252. According to the averment made on oath in the petition in para 2 (f): "The petitioner states and submits that in the meantime, petitioner also made inquiries about the original owner of the chassis purchased by him and petitioner has learnt that this was a chassis of the passenger bus of one Shri Kiritkumar

Pranlal of Rajkot who had disposed off his vehicle No. GJ-1-T.5252 in scrap with intimation to the RTO Office, Rajkot by his application dated 12.3.1996."

3. On the above material and relevant factual averments, it was contended that the seizure or detention of the vehicle u/s 207 was illegal and the only lapse committed by the petitioner was that he had carried out alteration without previous notice to or approval of the registering agency.

4. While admitting the petition on 26.3.1997 after notice to the respondents, the court granted interim relief in the following terms:

In view of the aforesaid, it is directed that pending this Special Criminal Application, bus No. GTX-3219 shall be released provided the petitioner furnishes a personal bond in the sum of Rs. 60,000/- and a solvent security to the same amount to the satisfaction of respondent No. 2-Regional Transport Officer, Rajkot. Before the delivery of the vehicle, a panchnama shall be prepared in presence of the petitioner. Direct Service. Sd/- Date:26.3.1997 (N.N. Mathur, J.)

5. It is stated through the affidavit-in-reply of the Deputy Director of Transport, Gujarat State, that, as per the certificate of registration of passenger bus bearing No. GTX-3219, it was having chassis No. AL-7673661 and engine No. ALI-52241. That, due to the aforesaid irregularities, it was detained u/s 207 of the Motor Vehicles Act, 1988 (as it stood prior to the subsequent amendment and hereinafter referred to as "the Act"). That, respondent No. 2 had issued a show cause notice to the petitioner on 26.12.1996 for cancellation of registration under Sub-section (5) of Section 55 of the Act and, in absence of any reply thereto, further action was being taken. It is further stated that chassis and engine numbers of the detected vehicle were of the passenger bus bearing No. GJ-1-T-5252 in respect of which cancellation of registration was applied for, but respondent No. 2 had not granted permission for cancellation of registration and issued notice dated 26.12.1996 for recovery of outstanding amounts of tax and penalty totalling to Rs. 3,18,752/-. It is also stated that, till valid cancellation of registration of the other bus, its chassis could not have been fitted in the detected bus and, even if approval were sought, it could not have been granted to replace the chassis by virtue of the provisions of Rule 53 of the Gujarat Motor Vehicles Rules, 1989. Thus, the petitioner had illegally replaced the chassis and engine of the passenger bus bearing No. GTX-3219 and use of such altered vehicle constituted use of the vehicle without registration and violated the provisions of Section 39 of the Act, whereupon the provisions of Section 207 were attracted and, therefore, detention of the vehicle by authorized officer was legal and proper, according to the submission.

5.1 Additional affidavit-in-reply made on behalf of respondent No. 2 revealed that Regional Transport Officer, Rajkot had, vide his order dated 05.6.1997, permanently cancelled registration of the vehicle, i.e. Registration No. GTX-3219; and, even after that, the vehicle was caught plying on road on 15.6.1997, which was reported by the police sub-inspector, traffic branch of Himatnagar.

6. During the course of hearing for final disposal, an affidavit-in-sur-rejoinder of the petitioner is filed to, inter alia, state that the bus bearing No. GTX-3219 was used as a contract carriage and was given on hire on commission basis to M/s. Nagin Bus Transport Company, Rajkot. That, respondent No. 2 had demanded tax and penalty, aggregating to Rs. 3,18,752/-, from Shri Kiritkumar Pranlal Jaiswal, the owner of bus bearing No. GJ-1-T-5252, and a copy of the demand notice dated 26.12.1996 was placed on record. It transpired from that notice that that bus bearing No. GJ-1-T-5252 was kept in non-use beyond three months for the period from 1.9.1994 to 30.9.1994, 1.11.1994 to 31.1.1995, 1.3.1995 to 31.3.1995, 1.7.1995 to 31.7.1995 and 1.8.1995 to 31.3.1996. It is stated that respondent No. 2 had erred in demanding tax from the owner of that bus. It is stated that Shri Kiritkumar Pranlal Jaiswal had also given that vehicle on hire on commission basis to M/s. Nagin Bus Transport Company, Rajkot. It is reiterated that the petitioner had purchased an identical chassis from M/s. New Pragati Automobile Garage which was originally the chassis of motor vehicle bearing No. GJ-1-T-5252. It is also stated that respondent No. 2 was aware of the transaction between M/s. Nagin Bus Transport Company and had, therefore, tried to involve the petitioner with a view to recover the tax. It is admitted that Shri Kiritkumar Pranlal Jaiswal is a cousin of the petitioner.

7. Perusing the notice dated 26.12.1996 addressed to said Shri Kiritkumar Pranlal Jaiswal by respondent No. 2, it was seen that the very subject-matter of the notice was that motor vehicle bearing No. GJ-1-T-5252 was used with the number-plate of motor vehicle bearing No. GTX-3219 and the tax and penalty due on that basis were sought to be recovered.

8. During the course of hearing, it was stated by learned Counsel Mr. R.B.Dave that the vehicle, which was released by the aforesaid order of interim relief, was no longer available as it was de-commissioned and dismantled. The Regional Transport Officer, Rajkot has, vide order dated 05.6.1997, ordered permanent cancellation of registration of the vehicle and, if the petitioner were required to furnish a fresh security or make payment of the amount for which he had furnished a personal bond, he was not in a position to do so as he had no money.

9. As for the legal aspect of the matter, it was fairly conceded that the vehicle in question was, in fact, found to be having the chassis number which was different from the number shown in the registration book and the vehicle did not display in the prescribed manner the registration mark at the time of inspection. Therefore, it could not be disputed that the motor vehicle was being used in contravention of the provisions of Section 39, which justified its seizure and detention under the provisions of Section 207 of the Act. It was also fairly conceded that adequate alternative efficacious remedy was available under the provisions of Sub-section (2) of Section 207 of the said Act. The petition does not carry the averment about the petitioner not having any other alternative efficacious and adequate remedy.

10. Thus, the petitioner is already granted the final relief of releasing the vehicle

subject to the conditions which now cannot be complied by him, according to the statement made by the learned advocate for the petitioner. And, on the other hand, the petitioner does not appear to have any case to challenge detention of the vehicle in the peculiar facts and admitted violation of the provisions of Section 39 of the Act. It was pointed out by learned A.P.P. that, even as registration of the bus bearing No. GTX-3219 was cancelled on 5.6.1997 and the same vehicle was found to be plying on 15.6.1997 and notice was issued to pay Rs. 17,188/- towards tax and penalty, the petitioner had submitted original permit of the vehicle which was valid upto 24.6.2000. Ultimately, even when all the documents related to the vehicle were sought to be surrendered on 30.6.1997 upon permanent cancellation of the registration, the petitioner had not produced the number-plate of the vehicle and endorsement to that effect was made below his application dated 30.6.1997. It was also pointed out from the last affidavit-in-sur-rejoinder of the petitioner that he had strenuously tried to show that the demand of tax and penalty against the other motor vehicle No. GJ-1-T-5252 was illegal and consequent rejection of the application for cancellation of registration of that vehicle by its owner was also illegal. It was also stated by learned A.P.P. that recovery of tax and penalty aggregating to Rs. 3,18.752/- sought to be effected by notice dated 26.12.1996 addressed to Shri Kiritkumar P.Jaiswal was never made and certificate to recover the same as arrears of land revenue was forwarded to the District Collector. He stated, on written instructions of Regional Transport Officer, Rajkot, that the revenue authorities, viz. the Mamlatdar concerned, had done nothing to recover the said amount of Rs. 3,18,752/- and, in similar 1071 cases, recovery of total Rs. 1,86,52,226/- were yet to be made despite representations made to the Collector concerned.

11. Thus, there are reasons to believe from the sketchy material on record that, at the time of inspection on 20.12.1996, the bus bearing registration No. GTX-3219, without properly displaying the registration mark, was rightly suspected to be in fact the vehicle bearing registration No. GJ-1-T-5252 and the demand of tax and penalty, as aforesaid, was made. The petitioner had returned the papers of the vehicle No. GTX 3219 but not the number-plates. The bus No. GJ-1-T-5252, its registration having not been cancelled, could continue to ply as GTX 3219 or with the original numbers without paying the dues thereon. The panchnama prepared at the time of delivering the vehicle under the orders of interim relief also clearly showed that the vehicle which was released bore the chassis number and engine number which were those of the vehicle registered as GJ-1-T-5252. Therefore, in all likelihood, the bus which was caught, inspected and released to the petitioner was the vehicle in respect of which liability of Rs. 3,18,752/- was outstanding and neither the registration of that bus is stated to have been cancelled afterwards nor is any recovery effected by the authorities; nor is it anybody''s case that the vehicle No. GJ-1-T-5252 was ever scraped, dismantled or that its chassis was replaced. Surprisingly, the original case of the RTO and basis of raising the demand of tax and penalty as stated in the notice

dated 26.12.1996 is not disclosed in any of the affidavits-in-reply of the respondents but, instead, an attempt is made to show that the identity of the bus in question as the motor vehicle No. GTX-3219 was accepted. Thus, there are reasons to believe that the petitioner has, in complicity and collusion with the respondent authorities of the Regional Transport Office, his cousin and the so-called bus service to which both buses were given on hire evaded the liability of tax and, by suppressing material facts and abusing the process of this Court, obtained possession of the vehicle without having any case in his favour on merits. And, after ten years of pendency of these proceedings, learned Counsel for the petitioner has clearly declared the petitioner''s inability to even abide by the bond executed by him; and at one stage, as the petitioner could not be approached even by his advocate, warrants had had to be issued for securing his presence in the court.

12. Therefore, the petition is dismissed with costs of Rs. 60,000/- which shall be paid by the petitioner to the Transport Commissioner, Block No. 6, Dr.Jivraj Mehta Bhawan, Old Sachivalaya, Gandhinagar, within a period of one month, and copy of this order shall be served upon that authority under the Secretary, Ministry of Ports and Transport, Government of Gujarat so as to initiate an enquiry, if thought fit, into the complicity of officers of the Regional Transport Office concerned and laxity in collection of tax and other dues through revenue authorities. Rule is discharged.