

(2022) 12 GUJ CK 0081

In the Gujarat High Court

Case No : R/Special Civil Application No. 23673 Of 2022

Kamlesh Harjibhai Vanzara

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 12 GUJ CK 0081

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : JS Sadhwani, Naveen D Patel, Dhwani Tripathi

Final Decision : Partly Allowed

Judgement

Biren Vaishnav, J

1 RULE returnable forthwith. Ms. Dhwani Tripathi, learned AGP, waives service of notice of rule on behalf of the respondent – State. With consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

2 By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the action of the respondent qua seizing of the excavator machine being Tata Hitachi Hyd. Excavator Model EX-110 Sr. No.1101-5349 and to direct the respondent authorities to release aforesaid excavator machine forthwith in the interest of justice.

3 Mr. Sadhwani, learned counsel for the petitioner, would rely on an order passed by this Court in Special Civil Application No. 19555 of 2022 which reads as under:

"7 Heard the learned advocates for the respective parties and also perused the documents as pointed out by them. The issue raised in the writ petition is governed under the Rule 12(2) (b) (ii) of the Rules, 2017 which reads as under:

"12. Seizure of property liable to confiscation.-(2)(b)(ii) a preliminary

investigation, and if compounding is not permissible under rule 22 or if he is satisfied that the offence committed in respect of the property is not compoundable, upon the expiry of forty-five days from the date of seizure or upon completion of the investigation, whichever is earlier, shall approach by way of making a written complaint, before the Court of Sessions."

8 The truck was seized on 06.10.2021, and therefore, undisputedly, the complaint, as envisaged under sub-clause (ii) of clause (b) of sub-rule (2) of Rule 12 of the Rules, has not been filed yet and, therefore, in absence of any complaint, the action of continuation of the detention of the truck by the respondent authority, is illegal and against the provisions of the Rules.

9 Reliance has rightly been placed on the judgment in the case of Nathubhai Jinabhai Gamara Vs. State of Gujarat, passed in Special Civil Application No.9203 of 2020. The Paragraph Nos.7, 10 and 11 of the judgment read thus:-

"7. Pertinently the competent authority under Rule 12 is only authorized to seize the property investigate the offence and compound it; the penalty can be imposed and confiscation of the property can be done only by order of the court. Imposition of penalties and other punishments under Rule 21 is thus the domain of the court and not the competent authority. Needless to say therefore that for the purpose of confiscation of the property it will have to be produced with the sessions court and the custody would remain as indicated in sub-rule 7 of Rule 12. Thus where the offence is not compounded or not compoundable it would be obligatory for the investigator to approach the court of sessions with a written complaint and produce the seized properties with the court on expiry of the specified period. In absence of this exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

10. The bank guarantee is contemplated to be furnished in three eventualities: (i) for the release of the seized property and (ii) for compounding of the offence and recovery of compounded amount, if it remains unpaid on expiry of the specified period of 30 days; (iii) for recovery of unpaid penalty. Merely because that is so, it cannot be said that the investigator would be absolved from its duty of instituting the case on failure of compounding of the offence. Infact offence can be compounded at two stages being (1) at a notice stage, within 45 days of the seizure of the vehicle; (2) during the prosecution but before the order of confiscation. Needless to say that for compounding the offence during the prosecution, prosecution must be lodged and it is only then that on the application for compounding, the bank guarantee could be insisted upon. In absence of prosecution, the question of bank guarantee would not arise; nor would the question of compounding of offence.

11. The deponent of the affidavit appears to have turned a blind eye on Rule 12 when he contends that application for compounding has been dispensed with by

the amended rules inasmuch as; even the amended Rule 12(b)(i) clearly uses the word "subject to receipt of compounding application". Thus the said contention deserve no merits. Thus, in absence of the complaint, the competent authority will have no option but to release the seized vehicle without insisting for bank guarantee. There is thus a huge misconception on the part of the authority to assert that even in absence of the complaint it would have a dominance over the seized property and that it can insist for a bank guarantee for its."

10 It has been held that it would be obligatory for the investigator to approach the Court of Sessions with a written complaint and produce the seized properties with the Court on expiry of the specified period. In absence of such exercise, the purpose of seizure and the bank guarantee would stand frustrated; resultantly, the property will have to be released in favour of the person from whom it was seized, without insisting for the bank guarantee.

11 Under the circumstances, in absence of any complaint, the petition deserves to be allowed and the action of the respondent authority in seizing the truck bearing registration No.GJ-10-U-6998 deserves to be quashed and set aside and is accordingly, quashed and set aside. The respondent authority, is forthwith directed to release the truck.

12 With the aforesaid direction, the matter is partly allowed. Rule made absolute to the aforesaid extent. Direct service is permitted."

4 Under the circumstances, in absence of any complaint, the petition deserves to be allowed and the action of the respondent authority in seizing the excavator machine being Tata Hitachi Hyd. Excavator Model EX-110 Sr. No.1101-5349 deserves to be quashed and set aside and is accordingly, quashed and set aside. The respondent authority, is forthwith directed to release the excavator machine being Tata Hitachi Hyd. Excavator Model EX-110 Sr. No.1101-5349.

5 With the aforesaid direction, the matter is partly allowed. Rule made absolute to the aforesaid extent.

Direct service is permitted.