
(1984) 01 GUJ CK 0009
In the Gujarat High Court

Pravinkumar Shantilal Shah

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 19-01-1984

Acts Referred:

Citation : (1984) 1 GLR 519

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

Bench : Single Bench

Judgement

R.A. Mehta, J.—This petition raises the question of handing over possession of the muddamal truck during the pendency of the trial. The trial court has directed that the possession of the truck be handed over to the respondent No. 2, accused because he is the registered owner thereof.

2. The second respondent, registered owner, had entered into a contract with the petitioner dated 12th May 1982 whereunder the consideration was fixed at Rs. 95,000/- and the petitioner had paid a sum of Rs. 25,000/- towards part-payment of the agreed amount and the balance amount of Rs. 70,000/- was to be paid by monthly instalment of Rs. 7,000/- beginning from 1st June 1982 and the monthly instalment was to be paid before 15th of every month. In case the purchaser (the petitioner) failed to pay the instalments, the vendor had reserved his right to take appropriate legal proceedings and the possession of the truck was handed over to the petitioner. Thus, the petitioner was in lawful possession of the said truck with the express consent of the second respondent.

3. The petitioner paid first instalment of Rs. 7,000/- in two parts, Rs. 5,000/- on 21st June 1982 and Rs. 2,000/- on July 2, 1982. He also paid Rs. 6,850/- by two drafts dt. 21st and 22nd July 1982 and claimed that an amount of Rs. 150/- was paid to the lawyer towards drafting the agreement. Thereafter in August, 1982 the truck met with an accident and there was extensive damage to the truck for which a claim was made from the insurance company. It is contended by the petitioner that he had to spend a very substantial amount towards the repairs of the truck and as the truck was out of business, he could not make the payment

of instalments and he had written to the second respondent to take the amount of the insurance claim towards the dues. On 15th September 1982 the petitioner had written to the second respondent a letter stating that the truck had met with an accident on 25th August 1982 and there is estimated damage of Rs. 35,000/- and the insurance claim was made and survey had also been made. It was also mentioned therein that since the truck was hypothecated with the bank by the second respondent, the insurance company would make the payment to the bank and it was mentioned that the insurance company was likely to sanction a claim of Rs. 21,000/- and it was also further stated that since the petitioner was incurring all the expenses for repairs, he should be given credit of that amount. It was also pointed out that he had paid two instalments of Rs. 14,000/- and a sum of Rs. 56,000/- was remaining to be paid. It was also stated that after deducting the insurance amount that might be received, he was willing to pay up the entire dues and he had also requested to let him know as to what was the outstanding amount of the bank so that he could make arrangement for payment to the bank. By another letter dt. 30th September 1982 it was mentioned that the truck was likely to be repaired soon. It was also mentioned that it was necessary to obtain copy of the panchnama and, therefore, the petitioner requested for copy of the panchnama and stated that until that panchnama was furnished there would be delay in sanctioning the amount from insurance company.

4. By a notice dt. 9th October 1982 the second respondent claimed that there was a default by the petitioner in payment of the instalments and in taking care of the vehicle and alleging that the petitioner had committed breach of the agreement, the petitioner was required to return the possession of the truck to the second respondent failing which the second respondent would take appropriate legal steps. The petitioner gave a reply dt. 18th October 1982 pointing out therein that he had paid substantial amount towards the consideration and had incurred a substantial expenditure of about Rs. 32,000/- in repair of the truck and the claim passed by the insurance company would be directly paid to the second respondent and, therefore, there was no question of default, because the insurance amount would be sufficient to cover the due instalments and the subsequent instalments would be paid as and when due. It was also pointed out that delay in insurance claim was due to not supplying the copy of the police panchnama by the second respondent. It was also mentioned that the petitioner was willing to make full payment. However, the second respondent had not given any response and the petitioner had reiterated his willingness to finalise everything.

5. It appears that thereafter there was some discussion amongst the parties and by a letter dt. 5th November 1982 the petitioner sent a draft of Rs. 2,000/- in pursuance of such talk and promised to pay Rs. 5,000/- directly to the bank. However soon thereafter he again reminded that he wanted to make the full payment and, therefore, he again requested the second respondent to make a response regarding the bank dues and other details and, therefore, he had not

remitted the amount of Rs. 5,000/- to the bank and had kept that amount with himself, and he also indicated that if the respondent was not interested in total payment, the petitioner should be informed by telegram so that the petitioner could make the payment to the bank. The petitioner had also stated that he had finalised with his financiers and, therefore, if the second respondent conveyed his willingness by telegram, the financier can also be called on the date fixed. However, if the respondent No. 2 was not so interested, the petitioner would remit the amount of Rs. 5,000/- to the bank as mentioned earlier. The petitioner had also requested reply by telegram. However, the second respondent did not give any reply to this and within a week on i.e. 24th November 1982, it is alleged by the petitioner the second respondent had taken away the truck and thereby committed criminal offences. The police had taken possession of the truck from the place near Mukhi Petrol Pump in Gondal. In the application made by the accused respondent No. 2 to the learned Magistrate, it has been stated that the police had taken possession of the truck from him. However, he has not explained as to how he came into possession of the truck. Below that application the court had passed the order:

P.S.I. to report.

and the P.S.I, did report that the police was not of the opinion for handing over the truck to the accused-respondent No. 2. The petitioner also made a similar application for handing over possession of the truck to him and the learned Magistrate has been pleased to order that the truck be returned to the accused-respondent No. 2 only on the ground that he is the registered owner.

6. In support of the order the second respondent relies on the judgment in the case of *Ncmdiram v. State* 7 G.L.R. 866. in that case this Court had held that ordinarily it would be prudent to allow a motor vehicle to remain in possession of the registered owner. However, the court was careful to say that ordinarily that should be so and it would be the duty of the court to find out the true claimant before passing the orders relating to such property during the pendency of the proceedings. Being a registered owner of the motor vehicle would certainly be a relevant and material factor to be taken into account for determining the question of handing over possession. However, that would not necessarily be the only determining factor. If such registered owner has lawfully and willingly transferred possession of the truck to another person, who is in lawful possession thereof, such other person cannot be deprived of such possession except in accordance with law and in pursuance of due process of law. Here it is alleged that the second respondent has criminally and illegally taken possession of the truck which was admittedly in lawful possession of the petitioner. The second respondent while admitting that the police had recovered possession of the truck from him, does not explain how he came to be in possession of the truck which he had handed over to the petitioner and in respect of which he had already recovered a substantial amount of consideration.

7. The learned Advocate for the second respondent has also relied upon the

judgment in the case of Patel Gordhanbhai Dahyabhai v. Pravinbharthi Bhagbharthi Goswami and Ors. Criminal Revision Application No. 393 of 1982 dated August 9, 1982. In that case the tempo in question was handed over to the purchaser months back and the transfer was also registered in the name of the purchaser even though the full purchase price was not paid and it was alleged that the vendor therein was cheated. However, in view of the fact that the possession was handed over months back coupled with the registered ownership of the purchaser, the court, following the judgment in the case of Nandiram (supra), confirmed the order of the learned Magistrate. However, in the present case, the facts are entirely different.

7.1. In the facts of the present case where the petitioner has been put in lawful possession by the second respondent himself and the petitioner has also paid substantial amount to the second respondent, prima facie the petitioner is entitled to possession and the second respondent is not entitled to the actual possession thereof at this stage. If at this stage the second respondent is given possession of the truck, even though when he has not explained as to how he came into possession, it would be giving him benefit of his alleged criminal acts and legalising his high-handed criminal acts.

8. In the result, the order of the learned Magistrate cannot be sustained and has to be set aside and reversed. It is directed that the possession of the truck be returned to the petitioner on condition that he shall furnish a surety of Rs. 95,000/- and also a bond of that amount and on a further condition that he shall produce the said truck again in the Court whenever directed by the Court. It is also further directed that the petitioner shall file an undertaking in the trial Court that during the pendency of the proceedings, he will not transfer possession of the truck or any of his rights in respect of that truck. Rule made absolute.