

(2014) 02 GUJ CK 0090
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 3920 of 2013

Tata Capital Financial Services Ltd.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 02 GUJ CK 0090

Hon'ble Judges : R.D. Kothari, J

Bench : Single Bench

Advocate : Mitesh R. Amin, Advocate for the Appellant; Rita Chandarana, APP, Advocate for the Respondent

Judgement

R.D. Kothari, J.—Being aggrieved by one of the conditions imposed by the learned 6th Additional Sessions Judge, Bhuj-Kachchh in Criminal Revision Application No. 57 of 2013, the applicant has preferred present petition.

2. Heard the learned Advocate Shri Mitesh R. Amin for the applicant and Learned APP, Ms. Rita Chandarana for the respondent-State.

3. Learned advocate for the applicant has drawn attention of the Court that applicant is a financial company. Through aid and intervention of applicant Co., the original accused has received delivery of Car-Range Rover, Jaguar from dealer. It is distinct and separate transaction and has not bearing with present complaint. Learned advocate for the applicant has drawn attention that present complaint came to be instituted by the complainant as the accused had said to have given assurance to give 3% interest and more, if amount is deposited with the accused. In pursuance to the said promise and transaction, complaint filed against the accused and in pursuance to another transaction i.e. transaction between present applicant and the original accused, the original accused has deposited some amount initially before the present applicant. It was submitted that the accused has deposited said amount i.e. margin money at around Rs. 1,50,000/- and in pursuance to that, the original accused has received delivery

from the car dealer. The original accused has said to have paid also first installment of the said transaction. It was submitted that the first transaction is around Rs. 20,000/-. The car was valued of around Rs. 40,00,000/-. The original accused has defaulted in payment of remaining installment. However, the car came to be seized by the Police, in pursuance to the above referred complaint filed by the complainant.

4. The present applicant had filed a Revision Application No. 57 of 2013 before the learned 6th Addl. Sessions Judge, Bhuj-Kachchh. The said Court was pleased to allow the application by imposing certain conditions. The conditions with which the present applicant is aggrieved, is directing the applicant to give undertaking to the effect that as and when the Court orders to produce the car, the said car shall be produced either by the applicant or the purchaser, who has purchased the car. The applicant prays for modification/deletion of this condition.

5. In the present case, the car is not a stolen property and the police has not seized the car in pursuance to any complaint or theft etc.

6. Considering the circumstances and complaint pursuant to which the car was seized by the police, interference is called for in above referred condition imposed by the trial court. The learned advocate for the applicant has drawn attention of this Court to an unreported judgment of this Court in Criminal Revision Application No. 452 of 1999 in the case of Nainaban Kipakbhai Nagarsheth v. State of Gujarat, decided on 1999, wherein this Court has observed as under:

Under these circumstances, in my view, the condition not to sell, transfer, gift or alienate the car to any one pending the trial imposed by the learned Magistrate was not warranted more particularly when the applicant has executed a Bond of Rs. 1,70,000/-. Car is a valuable movable property and when there is no dispute as to the ownership about the said car, said condition imposed requires to be removed. For the reasons aforesaid, Cri. Revision Application is allowed. The impugned order passed by the learned Metropolitan Magistrate, Court No. 11, Ahmedabad dated 6.8.1999 is hereby quashed and set aside. The condition imposed by the learned Metropolitan Magistrate, Court NO. 11, Ahmedabad vide his order No. 301/98 dated 9.3.1998 not to sell, gift, transfer or alienate the car till final disposal of the trial, is hereby deleted. The applicant is permitted to sell or dispose of the car in question in the manner which she deems it think and proper.

Rule is made absolute. No order as to costs.

7. In view of above, the above condition is hereby quashed and set aside. It is clarified and directed that till the disposal of the car in question, the applicant would be required to furnish bank guarantee equivalent to the amount received by the applicant by disposal of the car. The said bank guarantee would remain operative till the final disposal of the above referred criminal case or till any other order is passed by the Court, whichever is earlier.

8. It needs to be hardly stated that the amount received by the applicant by disposal of the car is not required to be deposited by the applicant before the Court.

9. The condition No. 5 whereby the learned trial court has directed to carry out auction of the vehicle in presence of Court Commissioner is also uncalled for in the facts of the present case. The said condition is hereby set aside.

10. Learned advocate, Mr. Amin for the applicant has placed on record affidavit filed by one Shri Keyur C. Raval, Manager of the applicant company. In the said affidavit, the deponent inter-alia mentions the manner in which the applicant proposes to re-sale the vehicle. The deponent has stated in Para. 3 as under:

3. The applicant respectfully states that instead of above referred conditions i.e. 1, 3 and 5 applicant herewith humbly requests this Hon"ble Court to substitute the same with the following conditions:

1) That the applicant undertakes to furnish a Bank Guarantee of the amount equivalent to sale the proceeds from the sale of the motor vehicle, before the Hon"ble Trial Court.

2) That the applicant undertakes to tender before the Hon"ble Trial Court, the entire documents relating to the sale transaction of the motor vehicle.

3) That the applicant states that the applicant intends to sale the said motor vehicle through Online Selling Portal namely www.cartrade.com where the applicant is a registered seller as well as inviting offers, accepting it etc. from prospective buyers and the entire documents relating to said procedure will be tendered before the Hon"ble Trial Court.

The copy of the entire procedure adopted by the applicant company for the sale of the repossessed motor vehicle is annexed herewith this affidavit.

11. The applicant is further directed to disclose before the trial court the procedure/mode the applicant has adopted for disposal of the seized vehicle. Such disclosure should be made by filing an affidavit. Such affidavit to be filed within three weeks before the trial court from the date of disposal of the vehicle.

12. The order of the learned trial court stands modified to the above extent. The application is partly allowed. Rule is made absolute to the aforesaid extent.