

(2013) 12 GUJ CK 0078
In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 3710 of 2013

Yunusbhai Ibhubhai Saiyed	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0078

Hon'ble Judges : G.R. Udhwani, J

Bench : Single Bench

Advocate : Soeb R. Bhocharia and Mr. Valimohammed Pathan, for the Appellant;
R.C. Kodekar, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

G.R. Udhwani, J.—RULE. Learned APP waives service. Considering the short dispute involved in the matter, the petition is taken up for final hearing by consent of the parties.

2. The petitioner has assailed the order dated 22.7.2013 passed by learned 2nd Additional Sessions Judge, Rajula declining to hand over muddamal truck owned by the petitioner, which was found to have been involved in the offence under Prevention of Cruelty to Animal Act, 1960, wherein admittedly the petitioner is not an accused. The only basis on which the impugned order came to be passed was the repetition of the offence and involvement of the same truck in that offence. While the first offence was registered at Khambha, in the present case, he has not been attributed with any offence under the aforesaid Act.

3. True it is that the courts below are bound to be strict in case of habitual offenders. However, at the same time, in cases where the vehicles are involved, keeping them idle in the police station after seizure during the course of trial which may continue for years, its condition may get deteriorated, exposing the State to a compensation in the event the State loses the case. In such cases, therefore, balance has to be struck by imposing suitable conditions which may

sub-serve the interest of the owner of the vehicle as also the State. The order declining to hand over the truck to the owner, in the opinion of this Court, is harsh and requires interference. At this stage, a reliance may be made to *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, In paras 15, 16, 17 and 18 following observations were made in the similar case by the Hon"ble Supreme Court.

15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to handover such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned Counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

4. In light of the aforesaid observations, it is very clear that no useful purpose is going to be served in keeping the truck idle for years to come during trial. Only achievement in such circumstances would be that the truck get deteriorate, exposing the State to compensation; thus wastage of public money. Under the circumstances, there is a considerable force in the submissions made by learned counsel for the petitioner that being an owner, he is entitled to receive the possession of the truck on the terms and conditions as prescribed below.

5. Accordingly, the petition succeeds. The impugned order is quashed and set aside. The truck in question shall be delivered to the petitioner on the following

terms and conditions. (1) He shall produce before the trial court necessary documentary evidence establishing his ownership over the truck.

(2) He shall undertake before the trial court to produce the truck as and when required.

(3) He shall also undertake not to alienate the truck during the course of trial.

(4) He shall report to the competent police station i.e. nearest at Bhavnagar once in a month with the truck.

(5) He shall deposit a sum of Rs. 5,000/- with an undertaking ensuring non-repetition of the similar offence.

(6) He shall inform the nearest police station names and addresses of persons in the eventuality of letting or handing over of the possession of truck for any reason.

On filing of the undertaking acknowledging the above conditions, the muddamal truck shall be released to the petitioner. Rule is made absolute with no order as to costs. Direct service is permitted.