

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL)
NO. 3810 of 2022**

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CHOLAMANDLAM INVESTMENT AND FINANCE COMPANY LTD. THRO
ILYASBHAI BHIKHABHAI KUSKIWALA
Versus
STATE OF GUJARAT
=====

Appearance:
JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1
NOTICE UNSERVED for the Respondent(s) No. 2
MS CM SHAH, APP for the Respondent(s) No. 1
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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA
Date : 19/01/2024
ORAL ORDER

1. **Rule.** Ld. APP waives Rule for the State. The petitioner is a non-banking finance company and present petition is filed through its legal officer, seeking to invoke extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India so also inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to release Muddamal Vehicle i.e. **Ecomet 1214 E4 (Make Ashok Layland Ltd.) registration No.GJ-19-X-3614.**
2. Heard Mr.Jaydeep H. Sindhi, learned advocate for the applicant and Ms.C.M. Shah, learned APP for the respondent - State. Respondent no.2-Ravindrabhai R. Sawain from whose the possession of the vehicle in question seized by the authority is presently in jail. Notice upon him has been served through jail authority. He has chosen not to appear.
3. Pursuant to the FIR registered with DCB Police Station, Surat, the vehicle bearing **Ecomet 1214 E4 (Make Ashok Layland Ltd.)**

registration No.GJ-19-X-3614 was seized as the same was used for transporting seized narcotics. The applicant Finance Company with hypothecation of the vehicle sanctioned and disbursed the loan amount.

4. In such circumstances, learned advocate for the applicant submitted that finance company is the owner of the vehicle and having all the rights to get the custody of it and if necessary, the company is entitled to sell it with the permission of the Court.

5. Learned counsel for the petitioner has relied upon orders passed by this Court in Special Criminal Application Nos. 2538 of 2014; 2283 of 2016 and 2300 of 2016.

6. This Court had passed the following order in Special Criminal Application No. 2538 2014 which reads as under :-

"16. In such circumstances, I am of the view that the vehicle should be handed over to the finance company and the company should be permitted to sell the vehicle subject to certain terms and conditions. In this context may quote with profit a decision of the Supreme Court in the case of General Assurance Counsel and others v. State of A.P. And others, 2010 AIR SCW 2967. The Supreme Court has made the following observations in paragraph Nos. 14 and 15 which reads as under:-

"14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai (Supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given with Section 457 of the Code, the following further directions with regard to

seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchamama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with. Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.

17. The respondent No.2 has not yet become the absolute owner of the property as he is obliged to pay the loan amount. Even as per the RTO records, the ostensible ownership is with the applicant company."

7. This Court is of the considered view that the vehicle in question is lying at the police station and considering the due amount of the loan, the applicant company is entitled to claim the possession of the vehicle. The learned Court concerned, considering the pendency of the sessions court, has refused to entertain the claim of the company. The findings about the pendency of the sessions court is erroneous. The interest of the prosecution can be taken care of by directing to draw panchnama of the vehicle and photographs thereof.

8. In the result, this petition is **allowed**. The order 01.04.2022 passed by the Sessions Court, Surat in Criminal Misc. Application No.1914 of 2022 is set aside. The concerned Police Station shall handover the possession of the vehicle to the petitioner at the earliest. It shall be open for the petitioner company to sell **Ecomet 1214 E4 (Make Ashok Layland Ltd.) registration No.GJ-19-X-3614** after executing a bond in the sum of the amount of sale consideration before the trial Court. The petitioner is at liberty to dispose of the vehicle in question after following the necessary procedure prescribed in law for the transfer of vehicle i.e. after drawing panchnama and taking photos of the vehicle. The petitioner shall intimate the trial Court about the sale consideration received by it. The petitioner shall also file an undertaking before the trial Court that the petitioner shall deposit the entire sale proceeds in the Court if required/ordered by the Court at the end of the trial. Rule is made absolute.

9. Rule is made absolute, accordingly. Direct service permitted.

(ILESH J. VORA,J)

Rakesh