

Mudassar Mustakali Shaikh Vs State Of Gujarat

Court: Gujarat High Court

Date of Decision: Dec. 3, 2020

Acts Referred: Constitution Of India, 1950 " Article 14, 226, 227

Code Of Criminal Procedure, 1973 " Section 451

Gujarat Prohibition Act, 1949 " Section 98, 100, 129, 132

Hon'ble Judges: Dr. A. P. Thaker, J

Bench: Single Bench

Advocate: K T Beladiya, Moxa Thakkar

Final Decision: Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Mr. K.T. Beladiya, learned advocate for the applicant and Ms. Moxa Thakkar, learned APP for the respondent " State through Video

Conferencing.

2. RULE. Ms. Moxa Thakkar, learned Additional Public Prosecutor waives service of notice of rule for respondent " State. With the consent of

learned advocates for both the sides, rule is fixed forthwith.

3. The present application has been filed under Articles 14, 226 and 227 of the Constitution of India and under Section 451 of the Criminal Procedure

Code with a prayer to direct the concerned authority to release the Muddamal vehicle being Honda Motorcycle and Scooter, Activa 4G (Gray Colour)

bearing Registration Number GJ,15,BR,8413, which is seized in connection with the FIR being C.R. No. III, 103 of 2018 registered with Dunga

Police Station, Dist. Valsad.

4. It is averred in the application that the present applicant is the owner of the vehicle in question i.e. Activa 4G bearing Registration Number GJ,15,BR,8413

15,BR,8413 which came to be seized by the police authority. It is also averred that considering the provisions of the Prohibition Act and other

decisions of this Court, the application may be allowed.

5. Learned advocate for the applicant has submitted the same facts which are narrated in the memo of application. He has prayed to allow the present

application.

5.1 Learned advocate for the applicant has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution

of India. It can also take into account the ratio laid down in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, AIR 2003 SC 638 wherein,

the Apex Court lamented the scenario of number of vehicles having been kept unattended and becoming junk within the police station premises.

6. Learned APP has strongly opposed to the grant of present application. She has submitted that in view of Section 98 of the Act, the vehicle used in

the crime under Prohibition Act is liable to be confiscated and therefore the application may not be entertained..

7. It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in the case of *Sunderbhai Ambalal Desai*

(Supra), which read as under: “

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 hand over 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.”

8. Having considered the submissions made on behalf of learned advocates for both the sides and considering the facts that the vehicle i.e. Acura 4G

bearing Registration Number GJ 15 BR 8413 has been seized by the concerned police authority during the course of the search under the

Prohibition Act. It also reveals from the materials placed on record that the applicant is the owner of the said vehicle. It is an admitted fact that if the

vehicle is kept unused then it will become useless.

9. At this stage, it is worthwhile to refer to the provisions of the Prohibition Act, especially, Sections 98, 100 and 132, which provide for confiscation of

the vehicle involved in the prohibition offence. Sections 98, 100 and 132 reads as under: “

Section 98. Things Liable to confiscation: “

(1) whenever any offence punishable under this Act has been committed,

(a) any intoxicant, hemp, mhowra flowers., molasses, materials. still, utensil, implement or apparatus in respect of which the offence has been

committed,

(b) where in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or

molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra

flowers or molasses,

(c) where, in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant,

hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of licence,

permit, pass or authorisation, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export, or

transport,

(d) where in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other

than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be

confiscated by the order of the court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-Ã,section (1) is found and the other contents of

such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to

confiscation by the order of the Court.

100. Procedure in confiscation.Ã,â€œ

When an offence under this Act has been committed and the offender is not known or cannot be found or when anythingliable to confiscation under

this Act is found or seized, the [Director], Director or any other officer authorised by the [State] Government in this behalf may make an inquiry and if

after such inquiry is satisfied that an offence has been committed, may order the thing found to be confiscated:

Provided that no such order shall be made before the expiry of one month from the date of seizure, or without hearing [the person, if any, claiming any

right thereto] and the evidence, if any, which he produces in support of his claim.

132. Articles seized.Ã, [When anything has been seized under the provisions of this Act by a Prohibition Officer exercising powers under Section 129

or by an officerÃ,inÃ, charge of a police station], or has been sent to him in accordance with the provisions of this Act, such officer, after such inquiry

as may be, deemed necessary, and

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is

forwarded or for his appearance before whom bail has been taken;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of

seizure to the Collector;

(c) if no offence appears to have been committed shall return it to the person from whose possession it was taken.

10. In view of the aforesaid provisions, it appears that the provisions provide for confiscation. However, considering the factual aspects of this case,

this Court is of the considered opinion that the custody of the vehicle, if granted in favour of the applicant, no prejudice is likely to be caused to the

prosecution as there will be stringent conditions on the applicant with regard to the seized vehicle i.e. Airtel 4G bearing Registration Number GJ-15-BR-8413.

15-BR-8413.

11. This Court has considered the principles laid down by the Apex Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, AIR 2003

SC 638. This Court has also considered the following orders of the Coordinate Bench of this Court.

(i) *Gujarat State Road Transport Corporation Through Depot Manager Morbi Vs. State of Gujarat* rendered in Special Criminal Application No.1126

of 2018 dated 21.06.2018;

(ii) *Anilkumar Ramlal @ Ramanlalji Mehta Vs. State of Gujarat* rendered in Special Criminal Application No.2185 of 2018 dated 05.04.2018;

(iii) *Munavarbhai Dadabhai Sandhi Vs. State of Gujarat* rendered in Special Criminal Application No.4996 of 2018 dated 19.07.2018;

(iv) *Dikulbhai Dineshbhai Patel Vs. State of Gujarat* rendered in Special Criminal Application No.10437 of 2018 dated 07.12.2018;

(v) *Balvantbhai Jivanbhai Sapra Vs. State of Gujarat* rendered in Special Criminal Application No.10835 of 2018 dated 19.12.2018;

(vi) *Rathod Gopalbhai Devabhai Vs. State of Gujarat* rendered in Special Criminal Application No.10964 of 2018 dated 21.12.2018;

12. In the result, this application is allowed. The authority concerned is directed to release the vehicle of the applicant, being Airtel 4G bearing

Registration Number GJ-15-BR-8413, on the terms and conditions that the applicant:

(i) shall furnish, by way of security, bond of Rs.30,000/- (Rupees Thirty Thousand Only) and solvent surety of the equivalent amount;

(ii) shall file an undertaking on oath before the trial Court that prior to alienation or transfer in any mode or manner, prior permission of the concerned

Court shall be taken till conclusion of the trial;

(iii) shall also file an undertaking on oath to produce the vehicle as and when directed by the trial Court;

(iv) in the event of any subsequent offence, the vehicle shall stand confiscated.

12.1 Before handing over the possession of the vehicle to the applicant, necessary photographs shall be taken and detailed panchnama in that regard, if

not already drawn, shall also be drawn for the purpose of trial.

12.2 If, the Investigating Officer finds it necessary, videography of the vehicle also shall be done. Expenses towards the photographs and the

videography shall be borne by the applicant. Rule is made absolute, accordingly. Direct service is permitted.

13. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned

advocate for the petitioner is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable

electronic mode.

14. The concerned Trial Court be informed accordingly.