

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1532 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJENDRA KUMAR AMRUTLAL SHAH

Versus

SESSION JUDGE

Appearance:

MR JASHBHAI P PATEL for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 30/10/96

ORAL JUDGEMENT

Rajendrakumar Amrutlal Shah the original complainant in cri. case no. 8030/96 on the file JMFC, Surat has come before this court requesting this court to exercise the powers under articles 226 and 227 of the Constitution of India and to quash and set aside the order passed by the learned JMFC, Surat on 27.9.96 by which he refused to hand over the possession of the

vehicle in question and the order of the learned Sessions Judge, Surat passed on 16.10.96 by which he confirmed the order passed by the learned JMFC rejecting the Cri. Revision Application No. 114/96 filed by the present petitioner.

2. There was a transaction between the present petitioner as the respondents as regards luxury bus No. GJ-1-T-4093 for the year 1991. It is the case of the respondent no.1 that said transaction was a transaction of hire purchase and under the said transaction possession of the bus in question was delivered to the present petitioner. It seems that thereafter the present petitioner had failed to pay the whole of the price of the vehicle and thereafter the owner of the vehicle took possession of the property viz. bus and he filed a suit against the present petitioner in the civil court for claiming damages. It seems that thereafter the present petitioner had filed cri. case against the respondent no.1 alleging that respondent no.1 had committed offence of cheating under section 420 IPC and he has also filed application under sections 93 and 94 Cr.P.C. to seize the bus in question. Thereafter he filed application before the learned Magistrate to deliver possession of the said bus to him. The learned Magistrate rejected the said claim of the petitioner and continued the possession of the vehicle with the respondent on certain terms and conditions.

3. The petitioner feeling aggrieved by the said order preferred Cri. Revn. Application no.114/96 before the learned Sessions judge, Surat and the learned Sessions judge, Surat by his order dated 16.10.96 rejected the said revision application and confirmed the order passed by the learned magistrate. Therefore, the petitioner has come before this court.

4. At the outset it must be stated that the petitioner's claim has been decided in the cri.revn.application filed by him. Admittedly on the date of the complaint, the applicant was out of possession of the vehicle in question. Admittedly there is no concluded transaction of completely transferring the ownership of the vehicle in question between the petitioner and respondent no.1 though the petitioner has made certain payment to the respondent. It is not in dispute that the transaction between the petitioner and the respondent no.1 is that of hire purchase and the respondent no.1 has taken possession of the said vehicle by claiming that he was entitled to take possession of the vehicle as per the terms of contract between them.

The respondent no.1 has also filed a suit in the court for claiming damages. But inspite of these things, present petitioner goes before the criminal court and files a criminal case alleging that the respondent accused has committed offence u/s 420 IPC and in that cri. case he got the vehicle seized and he obtained delivery of possession of the said vehicle to him. Now, when admittedly there was transaction of hire purchase between the petitioner and respondent no.1 and the respondent no.1 has taken possession of the vehicle by claiming that he is entitled to take possession of the vehicle as per the terms of the contract. If the learned Magistrate thought it proper to continue possession of the vehicle on certain terms and conditions with the respondent, in order to protect the interest of the present petitioner it could not be said that the discretion used by the learned Sessions Judge in passing the order u/s 451 Cr.P.C. is illegal or improper so as to interfere with the said order by exercising discretionary powers either under article 226 or 227 of the Constitution of India. In view of the above circumstances I hold that no interference is called for in the order passed by the learned Magistrate which has been confirmed by the learned Sessions Judge by exercising powers under articles 226 and 227 of the Constitution of India. Therefore, present petition will have to be dismissed and the same is dismissed summarily.

(S.D.Pandit.J)