

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 998 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMILABEN RAMESHCHANDRA JAISWAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 998 of 2003
MR CHIRAYU MEHTA for MS MEGHA JANI for Petitioner
MR PITAMBER ABICHANDANI A.P.P. for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/11/2003

ORAL JUDGEMENT

Rule. Mr.Pitamber Abichandani learned A.P.P.
waives service of rule on behalf of respondent - State.

At the request of the learned counsels for the parties, the matter is taken up for final hearing today itself.

2. This petition is filed under Articles 226 and 227 of the Constitution of India praying that the order passed by the learned Additional sessions judge, Vadodara, dated 2nd January, 2003 passed in Criminal Revision Application No. 240 of 2002 be quashed and set aside and to issue direction that the vehicle in question namely Tata Sumo bearing registration no.GJ-I-8E-4498 be handed over to the petitioner.

3. It appears that the petitioner alongwith one another is accused of committing offence made punishable under Sections 66-B, 65-E and 116 of the Bombay Prohibition Act, for which offence has been registered at C.R. No. III-419 of 2002 at Vadodara Rural Police Station. From the F.I.R. which has been produced on record of this petition, it appears that illicit liquor was being transported in the aforesaid vehicle by the present petitioner. The Police of Varnama Police Station, Vadodara (Rural) on 13th December, 2002 intercepted this vehicle and found that it was being driven by accused Raju alias Jamalkhan Jumakhan Sheikh and the present petitioner was also travelling in the said vehicle. On the vehicle being checked, it was found to carry Indian made foreign liquor worth Rs. One Lakh. In view of this, the offence has been registered and the vehicle has been seized by the Police.

3.1. The petitioner submitted an application under the provisions of Section 451 of the Code of Criminal Procedure, to the Trial Court to obtain possession of the vehicle. However, the said application was rejected by the learned Judicial Magistrate, First Class, 3rd Court, Vadodara, vide order dated 21st December, 2002.

3.2. The petitioner thereafter preferred Criminal Revision Application which as stated above was dismissed by the learned Additional Sessions Judge, Vadodara vide order dated 2nd January, 2003. It is this order which is being challenged by the petitioner in this petition.

4. Mr.Chirayu Mehta learned advocate appearing for Ms.Mehga Jani for the petitioner has submitted that the Courts below have failed to appreciate that the vehicle in question is Tata Sumo, and if such expensive article is allowed to remain at the Police Station, its condition will deteriorate and it is quite possible that by the time the trial is over, resulting into petitioner's

acquittal, she may be left with no other option but to sell it in the Junk yard. He has further submitted that the factor which is weighed with the learned Additional Sessions Judge, is that on previous occasion also this vehicle was involved in a similar type of offence. However, according to Mr.Mehta, the petitioner was not an accused of that case and the original accused Raju alias Jamalkhan Jumakhan Sheikh, who was also accused in the earlier case was acquitted by the Trial Court vide order dated 16th September, 2003. He, therefore, submits that the vehicle be released in favour of the petitioner.

4.1. As against that Mr.Pitamber Abichandani learned A.P.P. has submitted that the Courts below have given concurrent finding and in a petition under Article 227 of the Constitution of India, this Court may not interfere with the orders passed by them. He has further submitted that since this vehicle has been used more than once in such type of offence, it is very likely that if the petitioner is allowed to take possession of the vehicle, he will again indulge into such activity. He, therefore, submits that this petition be dismissed.

5. Having gone through the record of this petition and in particular, the orders passed by the learned Magistrate as well as learned Additional Sessions Judge, it appears that the factor that has weighed with the Courts below is that this vehicle was previously also involved in a similar type of offence. They have expressed anxiety that if the vehicle is allowed to be given to the petitioner, she will commence her illegal activity within no time. However, there is change in the circumstances after the order passed by the learned Additional Sessions Judge on 2nd January, 2003. The petitioner has produces on record the order of acquittal passed by the learned Magistrate in Criminal Case No. 3150 of 2001. Mr.Mehta has drawn my attention to the said order and has pointed out that the present petitioner was not accused in that case. Further that the present accused no.2 Raju alias Jumalkham Jumakhan Sheikh has been acquitted by the said Court vide judgment dated 16th September, 2003. In that view of the matter, the factor which has weighed with the learned Additional Sessions Judge, has undergone a change in these changed circumstances, I am required to consider the issue afresh. It is an admitted fact that this vehicle is quite expensive. It is also a common knowledge and the judicial notice can be taken of such fact that these vehicles when they are attached as mudammal of a case, they lie at the concerned Police Station absolutely unattended and by the time the Trial is over, they almost

become useless. In the event, the accused is acquitted and the vehicle is ordered to be given back to him/her, nobody would compassionate the loss which has been suffered by the accused. In such circumstances, ends of justice will meet, if upon certain conditions, the accused be given back the custody of the vehicle. It is, therefore, directed that considering the facts of the case and subject to the following conditions, the petitioner be handed over the vehicle in question, during the pendency of the trial of the case :-

- (i) that the petitioner shall deposit a sum of Rs.50,000=00 before the Trial Court on or before 6th December, 2003. Only upon depositing of the said amount, the vehicle should be released in favour of the petitioner;
- (ii) that during the pendency of the trial, the petitioner shall not transfer the vehicle either by sale or in any other manner to third person and retain his exclusive possession thereof with her;
- (iii) that the petitioner shall not make any material alterations in the vehicle and shall produce before the Trial Court or before the Police as and when she is called upon to do so;
- (iv) that in the event, the petitioner indulging into such activity again, the vehicle shall be confiscated and the deposit shall be forfeited by the Trial Court. The petitioner shall give an undertaking to this Court on oath on or before the aforesaid period that she will abide by these conditions.

With these directions, the petition is allowed.
Rule is made absolute.
Direct Service is permitted.

[AKSHAY H. MEHTA, J.]