

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF
MUDDAMAL) NO. 3178 of 2024**

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RAKESH KISHNA RAM BABAL
Versus
STATE OF GUJARAT & ANR.
=====

Appearance:

HIREN P KANDERA(9497) for the Applicant(s) No. 1
MR RITURAJ M MEENA(3224) for the Respondent(s) No. 2
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

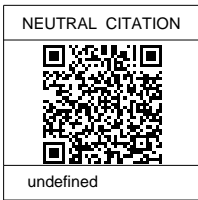
Date : 23/04/2024

ORAL ORDER

1. By way of this petition, the petitioner has prayed for quashing and setting aside Notice with Ref. No.5004435902 issued by respondent No.2 - TATA Motors Finance Ltd, and issuance of direction, directing respondent No.2 to immediately release and handover the custody of vehicle being TATA Tempo RTO registration No.PB-03-BK-6029 on such terms and conditions as deemed fit and necessary.

2. The petitioner was an accused in the offence being FIR C.R.No.11214023230749 of 2023 registered with Kadodara GIDC Police Station, Surat Rural, for the offence under Sections 65(e), 98(2), 81, 116B of the Gujarat Prohibition Act.

3. The case of the prosecution is that, while the police personnel were on patrolling, they received a secret information of the vehicle in question carrying liquor and when police authorities intercepted the same, on carrying out the

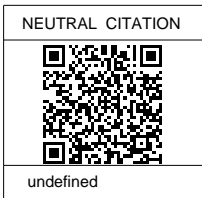


search of the said vehicle, its driver was found carrying liquor without any pass or permit. Therefore, the impugned FIR is filed and vehicle in question being TATA Tempo No.PB-03-BK-6029 came to be seized.

4. To release the said vehicle, the petitioner had preferred Special Criminal Application No.13803/2023 and the coordinate Bench of this Court vide order dated 19.10.2023 allowed the said petition and ordered to release the muddamal vehicle.

5. Here, it is the case of the petitioner that, though the vehicle has been released by the coordinate Bench of this Court, finance company has issued Notice qua non-payment of Rs.22,84,301/-, intimating that failing in making payment, the muddamal vehicle would be sold in auction at available price. Learned counsel for the petitioner submits that, though the petitioner has paid an amount, the finance company has issued notice, which is nothing, but violation of orders passed by the coordinate Bench of this Court as the vehicle was released by coordinate Bench of this Court imposing certain conditions, which read as under:-

- (i) shall furnish a solvent surety of the amount equivalent to the price of the vehicle in question stated in the FIR.
- (ii) shall file undertaking before the learned Trial Court that he shall not transfer / change the identity, color etc. of the vehicle till final disposal of the trial.
- (iii) shall produce the vehicle as and when directed by the learned Trial Court.
- (iv) in the event of any subsequent offence, the vehicle shall

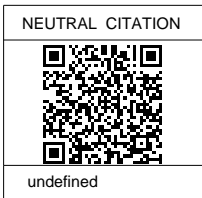


stand confiscated.

In view of the above, learned counsel for the petitioner requested to allow present petition by quashing and setting aside the notice issued by Respondent No.2 - finance company.

6. Mr. Rituraj Meena, learned counsel for the respondent No.2 has opposed the present petition and contended that, the petitioner has made totally false averments and no any amount is paid by the petitioner. The petitioner has not challenged arbitration proceedings before any forum till date. He submitted that the arbitration proceedings decided on 27.12.2023 and prior to that, notice was issued. He also submitted that, though the petitioner was aware about the entire proceedings, he did not opt to challenge the aforesaid arbitration proceedings.

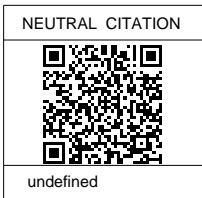
7. Having heard learned counsel for the respective parties and perusing the material placed on record, it appears that the muddamal vehicle was hypothecated to respondent No.2 Finance Company and upon failure in making payment on the part of the petitioner, the finance company has referred the dispute to the learned Arbitrator. In the said arbitration proceedings, learned Arbitrator vide order dated 27.12.2023 directed to recover the amount by selling out the vehicle in auction. Vehicle was already in possession of the finance company by way of interim custody. Total outstanding due is Rs.22,84,300/-. It *prima facie* appears that after releasing vehicle, no cause of action arise to file any litigation before this Court. Whatever the grievance raised by the petitioner in the



guise of the order passed by coordinate Bench of this Court releasing muddamal, he wants to stall the litigation initiated by respondent No.2 under different enactment and requested to quash the proceedings. The said prayer sought for by the petitioner is nothing, but an abuse of process of law and the petitioner is tried to get order, which is not permissible directly and thereby, by preferring present petition, he tried to snatch the order indirectly. If the petitioner is aggrieved by any action or inaction on the part of respondent No.2, then the petitioner ought to have filed appropriate proceedings separately and separate mechanism is there under the Arbitration and Conciliation Act. Further, as respondent No.2 has exercised its legal right to recover its due amount in the guise of releasing muddamal order, the petitioner wants to stall the recovery proceedings.

8. Considering the aforesaid facts and as the proceedings are measures of social justice though it appears that only with a view to protract the litigation with ulterior motive rather to put forward his case as to whether the notice issued by the finance company is not legal, just and legal and the petitioner is entitled to get vehicle in question, the petitioner may make out his case on merit. However, the petitioner has straightway approached this Court to thwart the said proceedings initiated by respondent No.2 - finance Company. This Court is of considered view that, such a practice shall be deprecated and should not be encouraged.

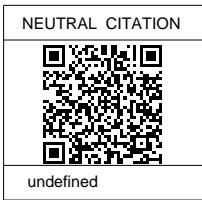
9. The Hon'ble Supreme Court in the case of **Dnyandeo Sabaji Naik and Another vs. Pradnya Prakash Khadekar**



and Others reported in **(2017) 5 SCC 496**, in paras 13 and 14 held as under:-

“13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of



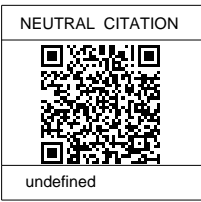
justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

Considering the aforesaid fact and the law laid down in the said decision, such a tactic on the part of the litigant must be firmly dealt with by imposing exemplary costs on the litigant concerned so as to ensure that access to courts is available to citizens with genuine grievances and it is not merely a matter of discretion, but a duty and obligation cast upon the Courts to ensure that legal system is not exploited by those, who use the forms of the law to defeat or delay justice.

10. Further, it is apt to refer to the decision of the Hon'ble Supreme Court in case of **Subrata Roy Vs. Union of India, reported in (2014) 8 SCC 470**, wherein, the Hon'ble Supreme Court has held in para 191 as under:-

"191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferers on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness whilst the litigation is pending, without any fault on his part."

11. In wake of aforesaid discussion, present petition is **dismissed** in limine. Considering the conduct of the petitioner,



more particularly without there being any cause, present litigation is filed as well as for wasting precious time of the court, this Court deems it fit to impose exemplary cost of Rs.10,000/- upon the petitioner. Out of the said amount, Rs.5,000/- shall be paid to respondent No.2 - Tata Motors Finance Ltd., and Rs.5,000/- shall be paid to Gujarat State Legal Services Authority within a period of **two weeks** from today. Notice is discharged.

(HASMUKH D. SUTHAR,J)

SUCHIT