

Case No. 18

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED: This the 26th day of August 2001

BEFORE

THE HON'BLE MR. JUSTICE S.R. BANURMATH

CRIMINAL PETITION NO.867/2000

BETWEEN :

M/s Ashok Leyland Finance Ltd., A Company registered under Companies Act 1956 having its regd. office at Sudarshan Building, 86, Chamiars Road, Chennai - 600 018 and one of its branch office at Panaji at Goa, represented by Asst. General Manager and Power of Attorney holder Sri. Rangarajan - Zonal office, No.25, K.H. Road, Bangalore - 560027

PETITIONER

(Sri.Padubidri Raghavendra Rao, Adv.)

AND

1. Smt. Priya Gaonkar Major, Resident of Flat No.3
St.Francis Colony, Santa Cruz, Goa.

2. Sri.Mukesh Major
C/o Smt. Priya Gaonkar, Major, Resident of Flat No.3
St.Francis Colony, Santa Cruz, Goa.

3. State Bank of Karnataka
by Shimoga Rural Police Station Authorities

RESPONDENT

(Sri N.V. Prakash, Addl. SPP)

Hire purchase agreement - vehicle involved in offence - clear photographs of the vehicle from different angles to be taken - would suffice for trial purpose - financier seeks return of vehicle - financier permitted to take custody and also sell the vehicle.

This Criminal Petition is coming on for admission this day, the court made the following :

ORDER

Heard the learned Counsel for the petitioner and the learned Additional State Public Prosecutor.

Perused the records.

This petition is filed under Section 482 Cr. P. C. praying to set aside the order dated 23.12.1999 passed by the learned Principal C.J.M., Shimoga, rejecting the application of the petitioner seeking permission to sell the lorry in question and deposit the sale proceeds in the case.

It is undisputed that the petitioner in the financing corporation and under hire purchase agreement it was taken by Priya Gaonkar for transport business. The accused in the crime Mukesh was her driver and while he was entrusted 201 bags of aracanuts to be delivered to Nagpur, it is alleged that the driver along with another diverted the same to Karwar and sold the said arcanuts valued at Rs.12,00,000/- and odd. As such on the complaint of the Manager, East India Transport Agency, Shimoga Branch, a case in Crime No. 45/1999 for the offences punishable under sections 406 and 420 IPC, came to be registered at Shimoga Rural Police Station and investigation was taken up. During the investigation the said truck has been seized and on filing of the application under section 451/457 Cr. P. C., by the petitioner, the same has been entrusted to the interim custody of the petitioner/Financier. Since from the date of taking into interim custody of the vehicle, the petitioner is looking after the same and in fact is recurring expenses of around Rs.1,000/- per month to keep the truck in proper condition. It is further contended that since the case is registered almost two year back and there is no progress and as the petitioner being the financier cannot make use of the vehicle and keeping the vehicle in idle condition would deteriorate itself value and no purpose would be served by keeping the vehicle idle. The petitioner be permitted to sell the vehicle.

It is seen from the impugned order of the learned Magistrate that the vehicle is used for transporting and the impugned allegation of commission of either cheating or misappropriation is in respect of goods carried in it namely aracanut bags. At the most the truck is required only for the purpose of identification and nothing more. As rightly submitted by the learned Counsel for the petitioner, if photographs of the truck are taken from different angles for the purpose of its identification and keep-

ing in view the damage which is likely to cause by keeping the vehicle idle till the conclusion of the trial thereby resulting in diminishing in value which will serve no purpose to anybody, in my view, it would be appropriate to direct the petitioner to dispose of the truck after taking the clear photographs of the same from different angles for the purpose of clear identification and produce the photographs and negatives of the same with due attestation from the responsible Officer of the petitioner. In so far as the proceeds of sale is concerned, the petitioner is at liberty to retain the same after filing the sale records before the Court as well as furnishing indemnity bond equivalent to the sale proceeds to the satisfaction of the trial Court.

In the result, the petition is allowed. This impugned order passed by the learned Principal C.J.M., Shimoga, in Crime No.45/1999 is set aside and a direction is issued to the petitioner to dispose of the truck after taking the clear photographs of the same from different angles for the purpose of clear identification and produce the photographs and negatives of the same with due attestation from the responsible Officer of the petitioner. In so far as the proceeds of sale is concerned, the petitioner is at liberty to retain the same after filing the sale records before the Court as well as furnishing indemnity bond equivalent to the sale proceeds to the satisfaction of the trial Court.