

March 2011 Sundaram Finance Ltd. v. The State of Tamil Nadu 437  
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**2011 (1) MWN (Cr.) 437**

**IN THE HIGH COURT OF MADRAS**

**C.T. Selvam, J.**

Crl.O.P. Nos.5278 of 2007 and 9744 of 2010

9.7.2010

*Crl.O.P. No. 5278 of 2007:*

Sundaram Finance Ltd., rep. by its Branch Manager (Legal), P. Vijayakumar  
.....*Petitioner*

Vs.

1. The State of Tamil Nadu, rep. by Inspector of Police, Kaveripattinam  
Police Station, Krishnagiri Taluk. 2. K. Mani .....*Respondents*

*Crl.O.P. No. 9744 of 2010:*

S. Nanda Gopi .....*Petitioner*

Vs.

State by Inspector of Police, Chitlapakkam Police Station, Chennai-600 064  
.....*Respondent*

**Criminal Procedure**  
**S.451**

Return of vehicles/sale of vehicles pending disposal of Criminal cases  
— Permissibility.

**CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 451 — Return of vehicles and sale thereof — Petitions seeking grant of permission to sell vehicles seized by Police in connection with Criminal cases — Contention, placing reliance on Apex Court decision in *Sunderbhai Ambalal Desai*, that it was not necessary to hold vehicles at Police Stations and Courts till trial in cases were completed — That, vehicles held at Police Stations and Court campuses are allowed to rust — Following Apex Court decision, *held*, return of vehicles and permission for sale should be general norm — Evidence relating to vehicles can be held in altered form — Causing of photographs and resort to videography together with recording such evidence as befits a particular case would well serve purpose — Where return of vehicles is sought and claim is highly contested, resort to sale of vehicle and credit of proceeds in fixed deposits pending disposal of case would be to common good — None gain when mere shell or remnants of vehicle returned after completion of trial — Criminal Courts directed to follow decision of Apex Court in *Sunderbhai* in true letter and spirit. (Paras 10 to 12)**

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**CASES REFERRED**

*Bharath Mehta v. State by Inspector of Police, Chennai*, 2008 (3) SCC (Cri.) 72..... 6  
*K.W. Ganapathy v. State of Karnataka*, 2002 CrLJ 3867..... 7  
*Sundaram Finance Ltd. v. State of Tamil Nadu*, CrL.M.P. No.9655 of 2003..... 8  
*Sunderbhai Ambalal Desai v. State of Gujarat*, 2003 (1) CTC 175 ..... 4, 5, 10, 12

**T. Srinivasaraghavan, Advocate for Petitioner in CrL.O.P. No. 5278 of 2007; S. Sathia Chandran, Advocate for Petitioner in CrL.O.P. No. 9744 of 2010.**

**J.C. Durairaj, Government Advocate (CrL.side) for Respondent No.1 in CrL.O.P. No. 5278 of 2007; V. Kasiviswanathan, Advocate for Respondent No.2 in CrL.O.P. No. 5278 of 2007; S. Ashok Kumar, Senior Counsel Amicus Curiae; A. Saravanan, Government Advocate (CrL.side) for Respondent in CrL.O.P. No. 9744 of 2010.**

**Finding — Cr.O.Ps. allowed.**

*Prayer in CrL.O.P. No. 5278 of 2007: This Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in CrL.M.P. No.2100 of 2006 on the file of the Judicial Magistrate, Krishnagiri with Cr. No.1135 of 2006 on the file of the Kaveripattinam Police Station, Krishnagiri and set aside the conditions 1 to 4 imposed in the order dated 04.12.2006 made therein and modify the same by granting permission to the Petitioner to sell the vehicle 'Swaraj Pickup LCV' having Chassis No.MHZGLAGM0086782 and fitted with engine No.SLCHM 79702 and having Registration No.TN-24-7911 by public auction or on private treaty.*

*CrL.O.P. No. 9744 of 2010: This Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records connected with the record passed by the Judicial Magistrate, Tambaram in CrL.M.P. No.737 of 2010 in C.C. No. 293 of 2010 dated 4.3.2010 and set aside the same and consequently modify the condition imposed in C.M.P. No. 287 of 2009 dated 27.1.2009 permitting the Petitioner to sell away the Petitioner's vehicle white Chevrolet Tavera bearing Registration No. TN-20-AP-0691 concerned in Crime No.36 of 2009 on the file of the Respondent- Police and pass further orders.*

**JUDGMENT**

1. These Petitions seek the right of sale of vehicles which have been placed in the custody of the Petitioners, under orders of the lower Courts.

2. In CrL. O.P. No.5278 of 2007, the Petitioner is a Non-Banking Finance Company, which had financed the purchase of a 'Swaraj Pickup Light Commercial Vehicle', under a hypothecated loan agreement. Upon the borrower making defaults in the repayment of the loan, the Petitioner proceeded to seize the vehicle, at which instance the Petitioner learnt that the hypothecated vehicle had been seized by the Police, in connection with the Crime No.1135 of 2006 for offences under Sections 4(1)(aa) & 4(1)(g) on the file of the first Respondent in CrL.O.P. No.5278 of 2007. The Petitioner filed CrL.M.P. No.2100 of 2006 before the Judicial Magistrate, Krishnagiri praying for return of the vehicle and seeking an order of sale thereof. The borrower/owner of the vehicle had, under an affidavit acknowledged his inability to repay the loan amount and consented to the return of the vehicle to the Petitioner. The learned Judicial Magistrate directed return of the vehicle to the Petitioner *inter alia* on condition that, 'the Petitioner execute a bond in a sum of ₹5,00,000/, provide a surety for the likesum and stipulated that the vehicle be not sold, subjected to encumbrance, altered in any manner and without destruction of any evidence'. This Petition is filed against such order. The owner of the vehicle has been impleaded as the Second

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Respondent under orders of this Court and though notice through Court has not been served upon him, proof of service of private notice has been filed before this Court.

3. The Petitioner in Crl.O.P. No.9744 of 2010, who is the owner of a Chevrolet Tavera Car, bearing Regn. No.TN-20-AP-0691 and was using the same as a contract carriage, informs that his vehicle was seized by the Respondent police on 20.01.2009 in connection with Cr. No.36 of 2009, registered for offences under Sections 341, 323, 363 and 506(i), I.P.C. The Petitioner informs that he is in no way involved in the commission of offences, was not arrayed as an Accused in the case and that he had approached the learned Judicial Magistrate, Tambaram in C.M.P. No.287 of 2009 seeking interim custody of the vehicle. Under orders dated 27.01.2009 such Court had directed return of the vehicle to the Petitioner *inter alia* on condition that he shall execute a bond of ₹5 lakhs, shall not alter or change or sell the vehicle and shall produce the same, as and when required. The Petitioner's vehicle was ill-fated in that on 3.11.2009, while in motion the engine caught fire and the entire front portion of the vehicle was charred and damaged. A Complaint was immediately filed in respect of such incident with the Pallikaranai Police Station. A certificate informing the position, was issued by the Sub-Inspector of Police attached to the Police Station and the same was sent to the Respondent police along with a detailed representation dated 26.11.2009. On finding that the cost of repairing the vehicle was way beyond that owed to the financier of the vehicle and that even the reimbursement by the insurers would not cover the deficit, the Petitioner had approached this Court in Crl.O.P. No.27441 of 2009 towards obtaining permission to sell the vehicle. This Court had dismissed such Petition as withdrawn on 06.01.2010 granting liberty to the Petitioner to work out his remedy before the learned Magistrate who had imposed the condition that the vehicle be not sold. The Petitioner approached the Trial Court in Crl.M.P. No.737 of 2010 towards obtaining permission to sell the vehicle, which was dismissed on 4.3.2010, *inter alia* on the reasoning that the main case was pending trial for offences under Sections 341, 363, 323, 506(ii), I.P.C. and the vehicle had been used for abducting one of the witnesses in the case, that the examination of the witnesses had not commenced, that the vehicle was necessary for the purpose of identification and had to be marked as a material object in the case and that the conduct of the trial would be affected thereby. It is against such an order that the Petition has been filed before this Court.

4. These Petitions and several other Petitions of similar nature raise a genuine concern on the general hesitancy displayed by the lower Courts exercising Criminal jurisdiction in permitting return of vehicles and sale thereof. This, despite the clear and unambiguous directions of the Hon'ble Apex Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat*, 2003 (1) CTC 175. That several vehicles are held at police stations and Court campuses across the State, allowed to rust and go to seed hardly need

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be informed. Concerned by the issue, which is of general importance, this Court while hearing CrI.O.P. No.5278 of 2007, has sought the assistance of learned Senior Counsel Sri Ashok Kumar, *Amicus Curiae*, who readily has obliged.

5. Learned Senior Counsel Sri Ashok Kumar informed that Chapter 34 of the Cr.P.C. comprising Sections 451 to 459 dealt with disposal of property. He would state that we primarily are now concerned with Section 451, Cr.P.C. Order for custody and disposal of property pending trial in certain cases, which corresponds to Section 516-A of the Code of 1898, but it would be useful to refer to Section 452, which deals with the order for disposal of property at conclusion of trial. A reading of sub-section 5 thereof, would make clear that, —

‘the term ‘property’ includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, *but also any property into or for which the same may have been converted or exchanged* and, anything acquired by such conversion or exchange whether immediately or otherwise’.

Thus, learned Senior Counsel would point to acceptance of evidence of property in form other than that it originally stood. Learned Senior Counsel would stress the importance of the judgment of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, 2003 (1) CTC 175 case to inform that it was not necessary for vehicles to be held at Police Stations and Courts till trial in cases were completed. Indeed, such decision indicates otherwise.

6. Learned Senior Counsel touches upon the decision of the Hon’ble Apex Court in *Bharath Mehta v. State by Inspector of Police, Chennai*, 2008 (3) SCC (Cri.) 72, wherein the return of the vehicle to the financier thereof had been directed.

7. Learned Counsel for the Petitioner in CrI.O.P. No.9744 of 2010, drew the attention of this Court to a decision of the Karnataka High Court reported in *K.W. Ganapathy v. State of Karnataka*, 2002 CrI.LJ 3867, wherein it had been observed, —

‘6. Irrespective of the fact whether the properties have evidentiary value or not, it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photograph or photostat copy of the property can be taken and made part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant.’

8. Learned Counsel also brought to the notice of this Court, an earlier case, *Sundaram Finance Ltd. v. State of Tamil Nadu*, CrI.M.P. No.9655 of 2003 in CrI.R.C. No.968 of 2001, wherein this Court had permitted sale of the vehicle.

9. I also heard the learned Government Advocate, in respect of the matter.

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**10.** This Court can do no better than reproduce the salient paragraphs in the judgement of the Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, 2003 (1) CTC 175:

'3. At the time of the hearing of these matters, learned Counsel for the parties submitted that various articles are kept at the Police Station for a long period by not adhering to the procedure prescribed under Cr.P.C., which creates difficulties for keeping them in safe custody. Finally, the sufferers are — either the State exchequer or the citizens whose articles are kept in such custody. It is submitted that speedier procedure is required to be evolved either by the Court or under the rules for disposal of mudammal articles which are kept at various Police Stations as most of the Police Stations are flooded with seized articles. It is, therefore, submitted that directions be given so that burden of the Courts as well as at the Police Stations can, to some extent, be reduced and that there may not be any scope for misappropriation or of replacement of valuable articles by spurious articles.

4. Learned Counsel further referred to the relevant Sections 451 and 457 of the Code of Criminal Procedure, which read thus:

*“451. Order for custody and disposal of property pending trial in certain cases.—* When any property is produced before any criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

*Explanation.—* For the purposes of this Section, 'property' includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

*457. Procedure by police upon seizure of property.—*

(1) Whenever the seizure of property by any Police Officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

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(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

6. It is submitted that despite wide powers, proper orders are not passed by the Courts. It is also pointed out that in the State of Gujarat there is Gujarat Police Manual for disposal and custody of such articles. As per the manual also, various Circulars are issued for maintenance of proper registers for keeping the mudammal articles in safe custody.

7. In our view, the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the Police would not be required to keep the article in safe custody;

3. If the proper Panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In *Basavva Kom Dyamangouda Patil v. State of Mysore*, this Court dealt with a case where the seized articles were not available for being returned to the Complainant. In that case, the recovered ornaments were kept in a trunk in the Police Station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. *The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal.* In a Criminal case, the Police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense,

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therefore, the Court exercises an overall control on the actions of the Police Officers in every case where it has taken cognizance.”

9. The Court further observed that where the property is stolen, lost or destroyed and there is no *prima facie* defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451, Cr.P.C. should be exercised promptly and at the earliest.

15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the Police Station premises, a 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 their owners or to the person from whom the said vehicles are seized by taking appropriate bond and 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 the vehicle 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 persons concerned.

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.

18. In case where the vehicle is not claimed by the Accused, owner, or the Insurance Company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the Insurance Company then the Insurance Company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If the Insurance Company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

24. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where Accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the Seizure Report may be sufficient. The Special Leave Petitions are disposed of accordingly.’

11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon’ble Apex Court in this regard is followed more in

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the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This Court expresses a sincere hope that atleast hereinafter the Criminal Courts would follow the decision of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, in true letter and spirit.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon production, the lower Court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The Petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.

14. The Registry is directed to circulate a copy of this order to all Sessions/Metropolitan/Judicial Magistrate Courts. This Court places on record its deep appreciation for the kind assistance of the learned Senior Counsel Mr. Ashok Kumar, *Amicus Curiae*.

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