GENERAL INSURANCE COUNCIL AND ORS. A

v.

STATE OF ANDHRA PRADESH AND ORS.

(Writ Petition (C) No. 14 of 2008)

APRIL 19, 2010 B

[P. SATHASIVAM AND DEEPAK VERMA, JJ.]

Code of Criminal Procedure, 1973 – ss.451 and 457 – Directions issued by Supreme Court in two earlier cases with regard to disposal of seized vehicles involved in commission C *of various offences – Petition under Art. 32 of the Constitution alleging non-compliance of such directions – Considering the mandate of s.451 r/w s.457, further directions now issued by Supreme Court – In addition, all State Governments/Union Territories/ Director Generals of Police directed to ensure* D *macro implementation of the statutory provisions – Activities of each and every police station, especially with regard to disposal of seized vehicles, directed to be taken care of by the Inspector General of Police of the concerned Division/ Commissioner of Police of the concerned cities/* E *Superintendent of Police of the concerned district – On non-compliance of the directions, action to be taken against the erring officials – Motor Vehicles Act, 1988 – s.158(6) – Central Motor Vehicle Rules, 1989 – r.159 – Constitution of India, 1950 – Article 32.*

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In two earlier cases, viz. *Sunderbhai Ambalal Desai's case** and *General Insurance Council's case***, **the Supreme Court had issued certain directions with regard to disposal of seized vehicles involved in the commission of various offences.** G

A writ petition under Article 32 of the Constitution was filed wherein it was contended that the police, the investigating agency and the prosecuting agency were

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A not taking appropriate and adequate steps for compliance of the directions issued by this Court in the aforesaid two cases. Prayer was made for further directions, orders and clarifications, so that national waste with regard to the seized vehicles may not become B junk and their road worthiness be maintained.

Disposing of the writ petition, the Court

HELD: 1.1. The information with regard to all insured vehicles in the country is available with the Insurance C Information Bureau created by IRDA. This information could be utilised to assist the police to identify the insurer of the vehicle. Upon recovery of the vehicle in police station, insurer/complainant can call an All India Toll Free No. to be provided by Insurance Information Bureau to D give the information of the recovered vehicle. Thereafter, the insured vehicle database would be searched to identify the respective insurer. Upon such identification, this information can be communicated to the respective insurer and concerned police stations for necessary E coordination. The information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. Also it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai's case,* considering the F mandate of Section 451 read with Section 457 of the CrPC, the following further directions with regard to seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon G as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama H may be prepared before such release. (B) The

photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with. Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer." [Paras 13, 14] [105-H; 106-A-H; 107-A-B]

1.2. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, all the State Governments/ Union Territories/Director Generals of Police are directed to ensure macro implementation of the statutory provisions. It is further directed that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district. In case any non-compliance is

reported either by the Petitioners or by any of the aggrieved party, then a serious view of the matter would be taken against an erring officer, who would be dealt with iron hands. [Paras 15, 16] [107-B-G]

*** *Sunderbhai Ambalal Desai v. State of Gujarat,* (2002) 10 SCC 283 and ** *General Insurance Council and Others v. State of Andhra Pradesh,* 2007 (8) SCR 192, referred to.**

Case Law Reference:

(2002) 10 SCC 283	**referred to**	**Para 1**
2007(8) SCR 192	**referred to**	**Para 8**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 14 of 2008.

Under Article 32 of the Constitution of India.

G.E. Vahanvati, AG, Mohan Jain, ASG, Jayshree Anand, AAG, K. Ramamurthi, A. Mariarputham, Joy Basu, B.K. Satijia, D.K. Thakur, S. Wasim A. Qadri, Anil Katiyar, Asha G. Nair, Rohini Mukherjee, Sadhana Sandhu, D.S. Mahra, Madhurendra Kumar, Bikas K. Gupta, Avijit Bhattacharjee, Gopal Jain, Nitin Mishra, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Sanjay R. Hegde, A. Rohen Singh, Ramesh Kr. Mishra, Sibo Sankar Mishra, Kamal Mohan Gupta, M.K. Michael, P.V. Yogeswaran, Gopal Singh, Rituraj Biswas, Noorjahan, K.K. Mahalik, Abhishek Vikas, T. Mahipal, Ram Naresh Yadav, Aruneshwar Gupta, S.S. Shamshery, P.N. Gupta, T. Harish Kumar, Prasanth P., Aruna Mathur, Amarjeet Singh Girsa, Arputham Aruna & Co., Anuradha Rustagi, D. Bharathi Reddy, Edward Belho, Enatoli Sema, Anil Shrivastav, Rituraj, Vikas Upadhyay, B.S. Banthia, M. Shoeb Alam, T.V. George, Navneet Kumar, Keshav, Corporate Law Group, B.B. Singh, H.K. Puri, Priya Puri, V.M. Chauhan, S.K. Puri, Naresh K. Sharma, Shailendra Swarup P.V. Dinesh, T.P. Sindhu, P.V. Vinod, P. Rajesh, Athouba Khaidem, H.B. Manar, Manish Kumar, V.G.

Pragasam, S.J. Aristotle, Prabu Rama Subramanian, Khwairakpam Nobin Singh, Ansar Ahmad Chaudhary, Dharmendra Kumar Sinha, Ajay Pal for the appearing parties. A

The Judgment of the Court was delivered by

DEEPAK VERMA, J. 1. Even though the question projected in this petition filed under Article 32 of the Constitution of India stands answered by a judgment of two learned judges of this Court reported in (2002) 10 SCC 283 titled *Sunderbhai Ambalal Desai Versus State of Gujarat* pertaining to interpretation and mode of implementation of Sections 451 and 457 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as 'the Code'), but on account of certain grey areas having been left untouched, which still cast clouds on the question, this petition has been filed for further directions, orders and clarifications. B C D

2. Petitioner No.1, General Insurance Council has been constituted under Section 64 C (b) of the Insurance Act, 1938 consisting of all the members and associate members of the association as envisaged in Section 64A of the said Act, who carry on general insurance business in India and are being represented by Petitioner No. 1 and have been arrayed as Petitioner Nos. 2 to 5 in the said petition. E

3. According to them, there has been a gross violation of fundamental rights as conferred on them under Articles 14 and 19 of the Constitution of India. Thus, they are constrained to approach this Court directly by filing a petition under Article 32 of the Constitution of India. They further contended that despite the directions passed by this Court in Sunderbhai Ambalal Desai (supra), as also in W.P. (C) No. 282 of 2007 titled *General Insurance Council and Others Vs. State of Andhra Pradesh and Others,* decided on 09.07.2007, there has not been full and complete compliance of the same. Therefore, they have once again approached this Court for issuing further directions so that national waste with regard to the seized F G H

A vehicles involved in commission of various offences may not become junk and their road worthiness be maintained.

4. According to the Petitioners, the report of 2005 of NCRB, 84,675 vehicles were reported lost, out of which 24,918 vehicles were recovered by the police and out of these, only B 4,676 vehicles were finally co-ordinated. As a result, several hundred crores worth of assets were lost. Further, by the time the recovered vehicles are released, the same are reduced to junk at the respective police stations. In other words, Petitioners have prayed that national waste that is being caused could be C substantially reduced, curbed and eliminated to a great extent. Keeping in view the aforesaid facts in mind, they have filed this Writ Petition.

5. In Sunderbhai Ambalal Desai (supra), the Supreme D Court was primarily dealing with provisions of Sections 451 and 457 of the Code. While quoting the aforesaid two provisions of the Act in the judgment, it was observed in para 7 as under:

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

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

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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, G 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

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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." A

6. To safeguard the interests of the prosecution, it was directed that following measures should be adopted giving instances contained in para 12 reproduced hereinbelow: B

"12 For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft,robbery or dacoity has taken place, then seized articles behanded over to the complainant after: C

(1) preparing detailed proper panchnama of such articles; D

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security." E

7. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the court observed as under:- F

"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 G 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.

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A 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
B 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
C 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
D detailed panchnama should be prepared."

8. Since it appeared to the Petitioners that despite the said directions, the requirements of the Petitioners were not being fulfilled, they were constrained to file W.P (C) No. 282 of 2007 titled *General Insurance Council and Others Vs. State*
E *of Andhra Pradesh and Others,* decided on 09.07.2007 by a coordinate Bench of two learned Judges of this Court.

9. In this second round of litigation before this Court, a direction was sought with regard to compliance of Section 158 (6) of the Motor Vehicles Act, 1988 in short 'the M.V. Act' and
F Rule 159 of the Central Motor Vehicles Rules, 1989 in short, 'the Rules'.

10. This Court in the said matter after considering the issue came to the following conclusion:-

G "Since there is a mandatory requirement to act in the manner provided in Section 158 (6) there is no justifiable reason as to why the requirement is not being followed.

It is, therefore, directed that all the State
H Governments and the Union Territories shall instruct, if not

already done, all concerned police officers about the need to comply with the requirement of Section 158 (6) keeping in view the requirement indicated in Rule 159 and in Form 54. Periodical checking shall be done by the Inspector General of Police concerned to ensure that the requirements are being complied with. In case there is non-compliance, appropriate action shall be taken against the erring officials. The Department of Transport and Highway shall make periodical verification to ensure that action is being taken and in case of any deviation immediately bring the same to the notice of the concerned State Government/Union Territories so that necessary action can be taken against the concerned officials."

The writ petition is accordingly disposed of."

11. Despite the aforesaid directions having been issued by this Court in the aforesaid two matters, grievance is still being made by the Petitioners, that the police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for compliance of aforesaid directions issued by this Court. Therefore, a need has arisen for giving further directions so as to clear the clouds and iron out the creases.

12. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in Sunderbhai Ambalal Desai (supra) as also under Section 158 (6) of the M.V. Act and 159 of the Rules as directed in *General Insurance Council* case (supra). Thus, in one voice, they have contended that there would not be any difficulty in compliance of the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

13. Petitioners have submitted that information with regard

A to all insured vehicles in the country is available with the Insurance Information Bureau created by IRDA. This information could be utilised to assist the police to identify the insurer of the vehicle. Upon recovery of the vehicle in police station, insurer/ complainant can call an All India Toll Free No. to be B provided by Insurance Information Bureau to give the information of the recovered vehicle. Thereafter, the insured vehicle database would be searched to identify the respective insurer. Upon such identification, this information can be communicated to the respective insurer and concerned police stations for C necessary coordination.

14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by D this Court in *Sunderbhai Ambalal Desai* (supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given.

E "(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be F taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as G secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the H event that the Magistrate finally adjudicates that the

rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer." A B

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district. C D E F

16. In case any non-compliance is reported either by the Petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. With the aforesaid directions, this writ petition stands finally disposed of. G

B.B.B. Writ Petition disposed of.