

GAHC010215532023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./423/2023

CHOLAMANDALAM INVESTMENT FINANCE COMPANY LIMITED
THROUGH ITS AUTHORIZED PERSON, NAMELY MR. ARVIND KUMAR
SINGH AGED ABOUT 45 YEARS,
HAVING ITS REGIONAL OFFICE AT 1ST FLOOR, P2V COMPLEX, IN FRONT
OF POLICE LINE, GANGA RAY COLONY ROAD, EAST DIGHI KALAN,
HAJIPUR, VAISHALI, BIHAR, PIN-844102

VERSUS

THE STATE OF ASSAM
REP. BY THE ADDL. PP, ASSAM

Advocate for the Petitioner : MR G SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

13.10.2023

Heard Mr. D. Baruah, learned counsel for the petitioner and also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. In this petition, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner, namely, Choramandalam Investment Finance Company Limited, has put to challenge the correctness or otherwise of the order dated 12.07.2023, passed by the learned Additional Chief Judicial Magistrate, Darrang, Mangaldai, in Petition No.278/2023, in connection with Dalgaon P.S. G.D. Entry No.96/2022.

3. It is to be noted here that vide impugned order dated 12.07.2023, the learned Court below has dismissed the petition filed by the petitioner seeking custody of the TATA LPT 3718 vehicle, bearing Registration No.BR-04GA-6311, Engine No.ISB59B4S180T1 and Chassis No.MAT541168K1A01514.

4. Mr. Baruah, learned counsel for the petitioner submits that the seized vehicle was purchased by one Ajay Yadav by taking financial assistance from the petitioner company. In support of the same, Mr. Baruah has referred to the hire purchase agreement between the petitioner company and Ajay Yadav at page-17 of the petition (Annexure-2), Mr. Baruah submits that the said agreement is still in force and Ajay Yadav has failed to make payment of the EMI to the petitioner company and as such, the petitioner company is entitled to repossess the vehicle and therefore, Mr. Baruah contended to allow the petition.

5. Mr. P. Borthakur, learned Additional Public Prosecutor, Assam, however, submits that he has not received any report from the Officer-in-Charge, Dalgaon P.S. as required by this Court, vide order dated 26.09.2023. However, Mr. Borthakur submits that since the hire purchase agreement was in force, and since the purchaser has failed to make repayment of the loan, the petitioner company is entitled to repossess the vehicle and as such he has no objection in the event of releasing the vehicle in the custody of the petitioner.

6. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the hire purchase agreement, which is placed on record at page-17 of the petition.

7. It appears from the record that the vehicle was purchased by one Ajay Yadav by taking financial assistance from the petitioner company and thereafter, he failed to make repayment of the loan amount and the said vehicle was seized by police in connection with one G.D. Entry being G.D.E. No.96/2022, dated 05.08.2022 of Dalgaon P.S., which was recorded in connection with missing of Ajay Yadav, leaving his vehicle near Ganesh Dhaba of Dalgaon.

8. Perused the petition as well as the documents placed on record and also perused the order dated 12.07.2023.

9. Having considered the submission of learned Advocates of both sides, and also having considered the facts and circumstances of the record and also in view of the judgment of Hon'ble Supreme Court in **M/s Magma Fincorp Ltd. Vs. Rajesh Kumar Tiwari** reported in **(2020)10 SCC 399**, where it has been held that financier is entitled to repossess the vehicle against non-payment of installment, this Court is inclined to allow this petition,

10. Accordingly, it is provided that on furnishing an indemnity bond of ₹ 30,70,000/-, the vehicle be released in the custody of the petitioner on the condition that the petitioner company shall produce the vehicle as and when directed the I.O. or by any Court.

Sd/- Robin Phukan
JUDGE

Comparing Assistant