

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2015

Coram:

THE HONOURABLE MR.JUSTICE S. MANIKUMAR

CRL.RC.No.167 of 2015

Anand Mul

Proprietor of Anand Parking Yard

rep. by Power of Attorney

P.V.Kulasekaran

.. Petitioner

-Vs-

1.State rep.by

The Inspector of Police,

M1, Madavaram Police Station,

Madavaram,

Chennai-600 110.

2.D.Arasukumar

.. Respondents

PRAYER: Revision filed under Section 397 and 401 Cr.P.C. to set aside the order passed by the learned Judicial Magistrate, Tiruvottiyur, in Crl.M.P.No.64 of 2015 in Crl.MP.No.7700 of 2014 and direct the 1st respondent to return the property of Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, to the petitioner.

For Petitioner : Mr.V.S.Senthil Kumar

For Respondents : Mr.P.Govindarajan,
Additional Public Prosecutor
for R1

JUDGMENT

Being aggrieved by the order made in Crl.MP.No.7700 of 2014 in Crime No.737 of 2014 on the file of the Inspector of Police, M1, Madavaram Police Station, Madavaram, Chennai, the present Criminal Revision Case has been filed.

2.Petitioner, is stated to be the proprietor of Anand Parking Yard represented by Power of Attorney P.V.Kulasekaran, Chennai. According to him, he is running a parking yard business. Premises is rented out to various finance companies for parking the repossessed vehicles from the customers, who have committed default in making regular payments. M/s.Galada Finance Limited, regularly park the repossessed vehicles in the parking yard. On 11.03.2014, Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, Engine

No.2KD6801109 and Chassis No.MBJ11JV4007277586, has been repossessed from one D.Arasukumar. According to the petitioner, M/s.Galada Finance Limited, is paying necessary parking charges. On 02.04.2014, about 09.30am, some unknown persons came into the parking yard, and security staff engaged by the petitioner have stopped them. However, the unknown persons have threatened the security persons by showing a knife and thereafter, towed away the said vehicle namely, Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, from the parking yard by using a rope. Being aggrieved by their atrocious acts, the petitioner has lodged a complaint before the 1st respondent Police on 03.04.2014, which was registered in Crime No.737 of 2014 dated 27.04.2014, under Sections 379, 365 and 462 IPC. The petitioner has contended that the Inspector of Police, M1 Madavaram Police Station, respondent No.1, was initially reluctant to proceed with the investigation and to seize the vehicle from the unknown persons. Subsequently, some progress has been made. The accused person has been arrested and vehicle was also seized. When the vehicle was under the custody of the Police, the petitioner filed CrI.MP.No.64 of 2015 on the file of the learned Judicial Magistrate, Tiruvottiyur. As a counter blast, Mr.Arasukumar, respondent No.2, accused in Crime No.737 of 2014, under Sections 379, 365 and 462 IPC, has also filed a petition for the same relief, before the learned Judicial Magistrate, Tiruvottiyur. Considering the rival claims, the learned Judicial Magistrate, Tiruvottiyur, by way of a Common Order dated 12.02.2015 has dismissed CrI.MP.No.64 of 2015 filed by the petitioner, and simultaneously, allowed CrI.MP No.7700 of 2014 filed by D.Arasukumar, respondent No.2 herein and thus, the revision case.

3.Before the lower Court, D.Arasukumar, respondent No.2, has contended that he had purchased the said vehicle namely, Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, under an installment scheme and accepted to pay Rs.39,800/- per month as monthly installment, for a period of 30 months. For default, the vehicle has been seized by the Company, and left in the parking yard. After taking notice, in the petition filed for return of the vehicle, the police has given a reply stating that RC Book stood in the name of D.Arasukumar. He had committed default. The petitioner in this revision case Anand Mul has submitted that the abovesaid vehicle has been stolen from the parking yard and that the respondent No.2, being an accused of the offences, under Sections 379, 365 and 462 IPC, is not entitled to an order of release of the said vehicle, to him. After considering the rival claims, the Court below, has recorded that the respondent No.2 has been arrested and later on released on bail. No charge sheet has been filed sofar. By observing that for the default committed by him, the finance Company ought to have followed the due process of law and without adopting the procedure, the said vehicle been seized, and further observing that filing of a charge sheet would take sometime and if the interim custody of the property is not ordered, it would get spoiled due to sunlight and rain and for the abovesaid reasons, allowed CrI.MP.No.7700 of 2014 filed by D.Arasukumar, respondent No.2 herein.

4. Though Mr. V.S. Senthil Kumar, learned counsel for the petitioner assailed the correctness of the order dated 12.02.2015 made in CrI.MP.No.7700 of 2014 in Crime No.737 of 2014, on the file of the learned Judicial Magistrate, Tiruvottiyur, on the grounds inter alia that the accused person is not entitled to an order of release of the property, and further contended that when the vehicle namely, Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, was entrusted with the custody of the petitioner, was stealthily removed, and further contended that the learned Judicial Magistrate, ought not to have ordered interim custody to the respondent No.2, this Court is not inclined to interfere with the impugned order, for the reason that admittedly, respondent No.2, had purchased the vehicle namely, Toyota Innova vehicle, bearing Registration No.TN-02AS-8888, under the Loan Agreement with M/s.Galada Finance Limited, agreeing to pay Rs.39,800/- in 36 equal monthly installments. Upon perusal of the contents of the Registration Certificate, the 1st respondent Police has stated that the 2nd respondent has borrowed money from the Finance Company. For the default committed, finance Company is stated to have seized the vehicle and entrusted the custody of the same to the parking yard, namely the petitioner herein. On the allegations that the petitioner has stealthily removed the vehicle from their custody, on the complaint, a case in Crime No.737 of 2014 has been registered on the file of the Inspector of Police, Madavaram Police Station. Police has to file a charge sheet. In the matter of recovery of any loan amount with interest, or getting an attachment of any immovable property, towards realisation of any decree that may be passed against the defendant in a suit or if there is any clause, in the agreement of finance, providing arbitration, generally, only after initiation of a notice, terminating the contract of agreement, a finance company would approach the Court of competent civil jurisdiction, by effecting an order for seizure of the vehicle.

5. In the case on hand, it is the contention of the petitioner that the vehicle has been seized and custody has been handed over to them. As observed in the foregoing paragraphs, Mr.D.Arasukumar, respondent No.1, has borrowed money from the finance company and purchased the Vehicle. On the facts and circumstances of this case, as regards the inter se rights of the parties for the custody of the vehicle, this Court is of the view that the borrower, who has failed to make the payment to the financier, should not be made to suffer. He would have either purchased the vehicle, for his own use or for commercial purpose. If the vehicle had been purchased for commercial purpose, then he should be permitted to use the vehicle, to generate source and repay the loan amount. Otherwise, the loan amount would increase in manifold along with interest, causing prejudice and irreparable loss to the respondent No.2. Even if the vehicle had been purchased for private use, then also, he should be allowed to use. Keeping the vehicle in the parking yard, would not serve the purpose, for which it is purchased. By keeping the vehicle idle in the parking yard, the petitioner is not going to be benefited. On the other hand, atleast the vehicle, can be used for the purpose, for which it is purchased. Offence alleged to have committed by the 2nd respondent is being investigated. Court is concerned on the aspect

of interim custody, till the disposal of the case. While ordering interim custody in CrlMP.No.7700 of 2014 dated 12.02.2015, the learned Magistrate, Tiruvottiyur, has imposed the following conditions:

"(1)the petitioner shall execute the bond for Rs.10,00,000/-.

(2)the petitioner shall not sell or pledge the mortgage property

(3)At the time of trial, the petitioner shall produce the property in the Court."

6.Considering the facts and circumstances of this case, in addition to the above, this Court deems it fit to impose the following conditions:

(i)The 2nd respondent shall establish the ownership of the vehicle by producing necessary original certificates before the respondent police and as well as before the learned Magistrate and the learned Magistrate on verification, shall retain the original documents, if necessary.

(ii)The petitioner shall not alienate the vehicle in any manner till adjudication is over.

(iii)The petitioner shall also give an undertaking that he will not use the vehicle for any illegal activities in future and also to produce the vehicle as and when required by the respondent Police.

The Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CS-IV)

Dated: 01.04.2014

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Sub Assistant Registrar

mps

To

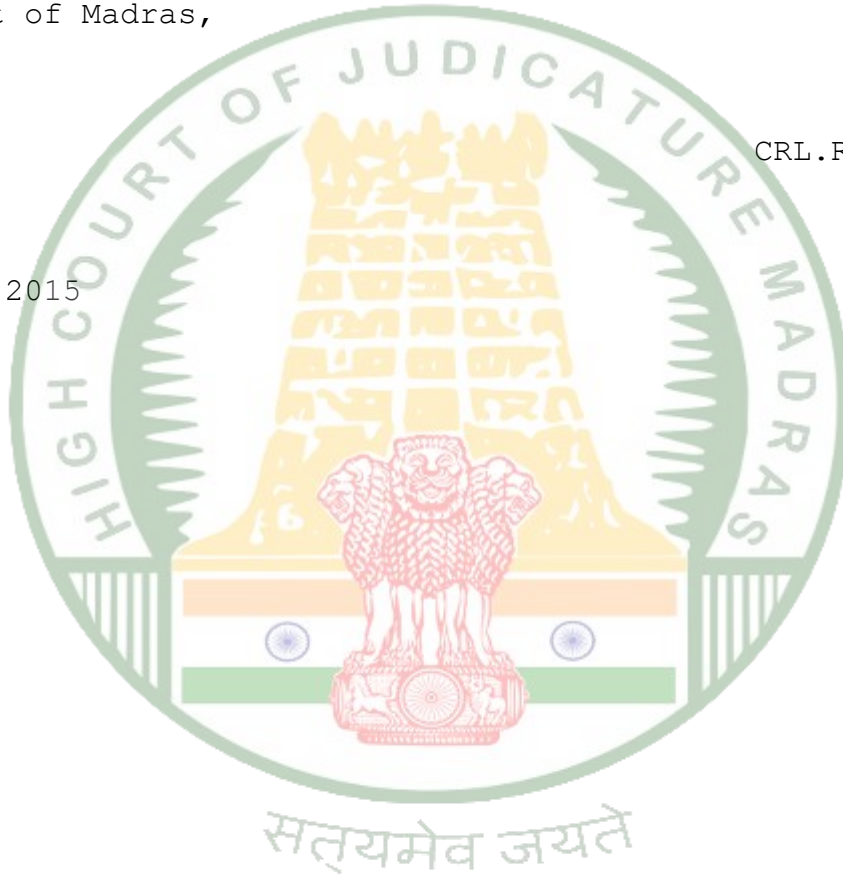
1.The Judicial Magistrate,
Thiruvottiyur.

2.The Inspector of Police,
M1, Madavaram Police Station,
Madavaram,
Chennai-600 110.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

CRL.RC.No.167 of 2015

KJI (CO)
EU 10.04.2015



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