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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.21 of 2015

V.K.Sukumaran

... Petitioner

Vs

State, rep., by
The Inspector of Police,
P-5, Police Station,
M.K.B. Nagar,
Chennai 600 039.
(Crime No.822 of 2014)

... Respondents

Criminal Revision filed under sections 397 r/w 401 of Criminal Procedure Code, to call for records of the order, dated 24.11.2014 in Crl.M.P.No.2871 of 2014, on the file of the Vth Metropolitan Magistrate, Egmore, Chennai, set aside the same and order return of the lorry to the custody of the petitioner herein in Crime No.822 of 2014, on the file of the respondent-Police.

For Petitioner : Mr.D.Ashok Kumar

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

O R D E R

Being aggrieved by the order, dated 24.11.2014, in Crl.M.P.No.2871 of 2014, on the file of the Vth Metropolitan Magistrate, Egmore, Chennai, dismissing the petition, for return of the vehicle, bearing Registration No.TN 28 J 0588, the present criminal revision case is filed.

2. Material on record discloses that a lorry, bearing Registration No.TN 28 J 0588, owned by M/s.Dinesh Babu Transport, was missing from 14.05.2014. In this regard, a complaint has been



registered in Crime No.822 of 2014 and thereafter, the lorry was found and produced before the learned Vth Metropolitan Magistrate, Egmore, Chennai. Crl.M.P.No.1937 of 2014 has been filed for return of the vehicle. The said petition has been allowed, with a condition that the petitioner should surrender the RC Book. According to the petitioner, as the original RC Book was with the financier, it could not be produced and hence, lorry was taken back by the respondent-Police. On the above facts, the petitioner has filed Crl.M.P.No.2871 of 2014, for return of the vehicle and that the same has been dismissed, on the grounds that the petitioner did not comply with the earlier order, made in Crl.M.P.No.1937 of 2014, dated 21.08.2014.

3. Assailing the correctness of the abovesaid order, Mr.D.Ashok Kumar, learned counsel for the petitioner submitted that when the original RC book of the said lorry was retained by the Financier and when the petitioner had already undertaken to furnish solvent securities, to the value of the said lorry, no useful purpose would be served, in retaining the lorry, in the premises of the Court, being exposed to sun and rain, resulting in diminution in the value of the vehicle. In the abovesaid circumstances, he submitted that the Court below ought to have ordered return of vehicle to the petitioner.

4. Mr.P.Govindarajan, learned Additional Public Prosecutor opposed the relief.

Heard the learned counsel for the parties and perused the materials available on record.

5. Material on record discloses that in the year 2001, the vehicle was registered in the name of Mr.P.Solaimuthu, D/o.Ponnusamy, by the Assistant Registering Authority, Namakkal. It was subject to a Hire Purchase Agreement, with M/s.Sundaram Finance Ltd., Chennai and hypothecation existed with the Finance Company. Thereafter, while transferring the ownership to Mrs.B.Vanitha, the hypothecation with M/s.Sundaram Finance Ltd. Chennai, has been cancelled, with effect from 16th March, 2010. Subsequently, ownership has been transferred to G.Manoharan, S/o.Govindan, with effect from 04.11.2011. This time, the vehicle was on Hire Purchase Agreement, with Sellappa Finance, Salem. Thereafter, again the ownership has been transferred to M/s.Dinesh Babu Transport, with effect from 22.05.2014.

6. When the vehicle was transferred to M/s.Dinesh Babu Transport, by the Assistant Registering Authority (Chennai (North-West), Chennai, there is nothing to indicate, as to whether, the Hire Purchase Agreement, with Sellappa Finance, Salem, continued to exist.



Though the petitioner has obtained an order in CrI.M.P.No.1937 of 2014, dated 21.08.2014, on the file of Vth Metropolitan Magistrate, Egmore, Chennai, with a condition to produce the RC Book, before the concerned Magistrate Court, it was not produced. The reason for non-submission of the RC Book, as per the version of the petitioner, is that as the vehicle was purchased through a Financier and since instalments were not paid, the RC Book has been taken back by the Financier and thus, it could not be produced before the Court.

7. As observed earlier, material on record discloses that whenever there is a change in the ownership, the Motor Vehicles Authorities have clearly noted down, the hypothecation of the vehicle, which existed with any Finance Company. In the year 2001, when the vehicle was purchased in the name of Mr.P.Solaimuthu, D/o.Ponnusamy, the Assistant Registering Authority, Namakkal, has recorded the hypothecation with M/s.Sundaram Finance Ltd., Chennai. When the vehicle was transferred to B.Vanitha, the Assistant Registering Authority, Namakkal, vide proceedings in R.No.71182/C2/2006, has clearly recorded that the hypothecation with M/s.Sundaram Finance Ltd., has been cancelled, with effect from 16.03.2010. Thereafter, when the vehicle was transferred to Mr.G.Manoharan, S/o.Govindan, Vellalagundam PO, Valapady, hypothecation of the vehicle, with effect from 04.11.2011, with Sellappa Finance, Shavapettai, Salem, has been recorded by the Assistant Registering Authority, Namakkal, vide R.No.108607/C1/2011. But the transfer effected in the name of M/s.Dinesh Babu Transport, by the Assistant Registering Authority, Chennai (North-West), Chennai, vide R.No.132/25279/2014, dated 22.05.2014, does not reflect any existing hypothecation, with any finance company. It is also to be noted that no Finance Company has come forward to seek for return of the vehicle.

8. No material has been produced before the Court below to prove that for non-payment of instalments, the original RC Book, has been taken back by the Financier. No loan details have been furnished. Had the hypothecation continued with any new finance company, certainly, steps would have been taken by that Company, for return of the vehicle. Admittedly, in the case on hand, no such petition has been filed by the Finance Company. Therefore, when the petitioner had not complied with the condition of production of the original RC book of the vehicle, the Court below cannot be said to have committed any manifest illegality in dismissing the petition filed for interim custody.

9. However, having regard to the decision in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in AIR 2003 SC 638 = 2002 (10) SCC



283, wherein, at Paragraph 17, the Supreme Court has observed that whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period and 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 and this can be done pending hearing of applications for return of such vehicles, this Court deems it fit to direct the release of vehicle, subject to the conditions that the petitioner, executes immovable property security, for the value of the said lorry, to the satisfaction of the learned Vth Metropolitan Magistrate, Egmore, Chennai. The petitioner shall also further undertake,

(i) to produce the vehicle, bearing Registration No.TN 28 J 0588, before the concerned Court, on the first working day of every month,

(ii) to produce all the available documents, pertaining to the vehicle, including transport permits, if any, obtained from the Motor Vehicles Act,

(iii) to produce the subject vehicle, as and when required.

(iv) not to alienate, encumber or alter the vehicle.

(v) to take photograph of the vehicle, engine and chasis numbers and produce the photographs and negatives to the Court, consenting for the above, to be marked as additional evidence in trial.

10. With the above directions, the present Criminal Revision Case is disposed of. No costs.

After the orders were pronounced, Mr.D.Ashok Kumar, learned counsel for the petitioner submitted that the petitioner can now produce the original R.C. Book. Accepting the said submission, condition imposed to execute the immovable property security is modified and lieu of the same, the petitioner shall produce the original R.C. Book, after taking a xerox copy of the same for use.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm



To

1. The Inspector of Police,
P-5, Police Station,
M.K.B. Nagar,
Chennai 600 039.
2. The Vth Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Ashok Kumar, Advocate, S.R.No.11707

Crl.R.C.No.21 of 2015

LRS (CO)
CA(17/03/2015)