

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.6.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No.636 of 2010

M/s. Kotak Mahindra Prime Ltd.,
Represented by its Authorised
Signatgory, Mr.Chinnamuthu
CEEGBROS Centre, 1st Floor
New No.39, Old No.45
Montieth Road, Egmore,
Chennai - 600 008.

...Petitioner

Versus

1. State by
Inspector of Police
K-1, Police Station, Chennai.
2. Mr.Karthick
3. Mr. Nagaraj
4. Mr.Marimuthu @ Hari
[R2 & 4 impleaded as per order
dated 09.07.2010 in M.P.No.1 of 2010]

...Respondents

Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. against the order dated 19.4.2010 passed by the learned V Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.1300 of 2010 in Crime No.15 of 2009.

For Petitioner : Mr.Anand
for M/s.Anand, Abdul & Vinodh Associates

For R1 : Mr.V.Arul
Government Advocate (Crl.side)

For R2 : M/s. Natha & Associates

For R3 and R4 : Mr.Anand Venkatesh

ORDER

The petitioner has filed the above Criminal Revision Petition challenging the order dated 19.4.2010 passed by the Court below in rejecting the application filed by the petitioner under Section 451 of Cr.P.C. for return of property, namely, TELCO INDICA DLE CAR bearing Registration No.TN 07 AZ 4140.

3. The case of the petitioner in brief is as follows:

According to the petitioner, he is doing business of providing financial facility to the prospective customers for the purchase of automobiles etc., During the course of business, the second respondent purchased the car bearing Registration No. TN 07 AZ 4140 under Hire Purchase from the petitioner. But the second respondent failed to repay the loan amount of Rs.23,270.83/-. While so, the first respondent seized the vehicle from the second respondent in connection with the case in Crime No.15/2009 and was kept under illegal detention in the first respondent police station. Since the second respondent committed default in payment of money, the petitioner filed a petition before the Court below under Section 451 of the Criminal Procedure Code seeking custody of the vehicle. The Court below dismissed the said petition on the ground that the second respondent has already paid some money.

4. The learned counsel for the petitioner submitted that the Court below has mechanically passed the order stating that the second respondent has paid some money. The learned counsel for the petitioner further submitted that the petitioner is the owner of the vehicle in question as seen in the endorsement in the RC Book and the Court below, without considering the same, has dismissed the petition. In any event, after seizure, the vehicle is parked in the police station in the open place and it is exposed to sun, rain and dust. If the custody of the vehicle is not handed over to the petitioner, the value of the vehicle will be diminished. The learned counsel also submitted that he is willing to return the vehicle as and when required and he will not alienate the vehicle till the disposal of the case. Therefore, the learned counsel appearing for the petitioner prayed this Court to allow this Criminal Revision Petition.

5. On the other hand, the learned counsel for the respondents 3 and 4 submitted that there is a dispute between the respondents 2 to 4 and, therefore, the vehicle should not be returned to the petitioner.

6. I have also heard the learned Government Advocate (Criminal Side) appearing on behalf of the first respondent and perused the materials available on record.

7. On a perusal of the entire papers, it is very clear that there is no dispute with regard to the Hire Purchase Agreement. Even it is the contention of the second respondent before the lower Court that he paid a sum of Rs.90,000/-. The Court below also dismissed the petition only on the said ground. The only grievance of the petitioner is that as the vehicle is now under the custody of the first respondent, the vehicle is getting deteriorated day by day because of the constant exposure of it to the sunlight and poor maintenance.

8. In the decision of this Court reported in Gajendran vs. State, through Inspector of Police, Civil Supplies CID, Madurai (2008) 6 CTC 846 it was held that valuable properties need not be unnecessarily kept in the Court custody and it can be released with sufficient safeguard. According to the petitioner, he is the owner of the car and if the vehicle is allowed to be kept in Court deposit, it will be exposed to dust, heat and rain and it will diminish the value of the vehicle. Under those circumstances, I am of the view that the order passed by the Court below refusing to return the vehicle is unsustainable and, therefore, this Revision Petition is allowed. The Court below is directed to return the CAR - TELCO INDICA DLE, bearing Registration No. TN-07-AZ-4140 to the petitioner as is where is condition subject to the following conditions:-

i) The petitioner shall establish the ownership of the vehicle in question by producing the Hire Purchase agreement and other relevant records and the learned Magistrate, on perusal of the said documents, retaining the xerox copy of the same, shall return the original documents to the revision petitioner. The original R.C. book will be kept only in the Court.

ii) The petitioner shall execute bond for Rs.25,000/- [Rupees Twenty Five Thousand only] to the satisfaction of the learned V Metropolitan Magistrate, Egmore at Chennai.

iii) The petitioner shall not alienate or encumber or alter the vehicle in any manner till the disposal of the criminal case.

iv) The court below shall effect return of the vehicle to the revision petitioner after causing necessary photographs and panchanama. The panchanama shall be drawn up by an officer of the Court in the presence of two Panchayatdhars and in the immediate presence of the Presiding Officer of the Court.

v) The petitioner shall file an affidavit of undertaking to the effect that he will produce the vehicle in question as and when it was directed to be produced by the court below during the course of trial.

vi) It is made clear that if the petitioner did not produce the original Hire Purchase Agreement or Original R.C.Book and other relevant documents, this order will not enure to the benefit of the petitioner.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The V Metropolitan Magistrate,
Egmore, Chennai.

2. -Do- Through The Chief Metropolitan Magistrate,
Egmore, Chennai.

3. The Inspector of Police,
K1, Police Station,
Chennai.

4. The Public Prosecutor,
High Court, Madras

1 CC to M/s.Anand, Abdul & Vinodh Associates, Advocate SR.No. 31014

Cr1 RC No.636 of 2010

TEJ (CO)
PSI (08.07.2015)



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