



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

WEB COPY

P.Karthick

Criminal Revision Case (MD)No.36 of 2015

.. Petitioner

Vs.

1.State through the Inspector of Police,  
Vedasandur Police Station,  
in Crime No.252 of 2013.

2.N.Raja

.. Respondents

Revision is filed under Section 397 r/w 401 Cr.P.C. to call for the records in Cr.M.P.No.3563 of 2014 on the file of the Judicial Magistrate Court, Vedasandur in Crime No.252 of 2014 on the file of the Vedasandur Police Station, Vedasandur and to set aside the same by granting custody of the Eicher vehilce bearing registration No.TN-29 AU 9939 to the petitioner with a permission to sell the same by public auction or on private treaty or such condition that this Court may stipulate.

For Petitioner : Mr.B.Rajesh

For R1 : Mr.P.Kandasamy

Government Advocate (crl. side)

For R2 : Mr.P.Banu Prasath

#### ORDER

The property involved in this petition is a van bearing registration No. TN-29 AU 9939 worth about Rs.10,92,000/-, which originally belonged to the petitioner's concern called India Infoline Finance Limited.

2.The second respondent herein wanted to purchase a vehicle on hire purchase basis and he has paid a sum of Rs.32,000/-, as first installment in November 2013.

3.It is represented by the learned counsel for the revision petitioner that the amount payable for each month is at Rs.32,000/- for a period of 25 months and out of which, only one instalment has been paid. The vehicle has been seized by the first respondent in Crime No.252 of 2015 in respect of the offence under Sections 380 and 457 IPC.

4.It is alleged by the second respondent that as he was in judicial custody, no petition could be filed by him in respect of the return of property. But now he is stated to be on bail.

4.1.The petition filed under Section 457 Cr.P.C. before the learned Judicial Magistrate has been dismissed on two grounds viz.,

(a)The petitioner as sales manager of the India Infoline Finance Limited did not have any authority delegated to him to get the return of property; and

(b) If the custody of the vehicle is ordered in favour of the petitioner, the second respondent will lose the amount already deposited with the petitioner.



5. Whether these two grounds are sustainable is the issue to be considered.

6. Admittedly, the relationship between the petitioner herein and the second respondent is creditor and debtor and the second respondent herein has purchased the property on a hire purchase agreement. After the payment of first installment, the remaining has not been paid.

7. The learned counsel for the second respondent would vehemently contend that the possession of the vehicle alone is the sole life giver for the second respondent and therefore, it should be ordered only in favour of the second respondent.

8. The fact remains that when the second respondent has not paid the entire amount due to the petitioner herein, he cannot claim complete ownership for the vehicle. To give opportunity to the second respondent to pay the amount or to arrive at settlement, the matter was referred to mediation. It appears that in the mediation centre, the second respondent did not appear and utilise this opportunity. Therefore, the matter was referred to this Court.

9. When the purchase price payable (by installment) is not paid, the owner has the liberty to cancel the hire purchase agreement and to repossess the vehicle. Excepting one installment of payment, the second respondent has not paid the dues payable towards purchase of vehicle. Under such circumstances, the second respondent cannot make any claim and even now he is not ready to pay the balance amount due under the hire purchase agreement.

10. The observation made by the learned Judicial Magistrate that the second respondent will lose the amount already paid, cannot be accepted, as the ownership of the vehicle itself has not been transferred in favour of the second respondent. Therefore, the order passed by the Court below is unsustainable and it is liable to be set aside.

11. In the result, this Criminal Revision Petition is allowed and the order passed by the learned Judicial Magistrate, Vendasandur is set aside. The learned Magistrate is directed to return the property to the petitioner imposing appropriate conditions. It is made clear that if the second respondent is ready and willing to pay the entire amount due, then it is open to him to file a fresh application before the learned Magistrate seeking return of property impleading the revision petitioner herein as a respondent.

Sd/-  
Assistant Registrar (AS)

/True copy/

Sub-Assistant Registrar

To

1. The Inspector of Police,  
Vendasandur Police Station.



2.The Judicial Magistrate,  
Vedasandur.

3.-do-thro The Chief Judicial Magistrate, Dindigul

+1cc to M/s.B.Rajesh, Advocate SR.No.57419/15

+1cc to M/s.P.Banuprasath, Advocate SR.NO.57564

JAM:AAL:26.10.2015:3P/6c

CrI.R.C. (MD) No.36 of 2015  
30.09.2015