

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(SPECIAL ORIGINAL JURISDICTION)

FRIDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.5223 of 2013

BETWEEN

Anil Bhandari.

... PETITIONER

AND

The Station House Officer, Bowenpally Police Station, Secunderabad.

...RESPONDENT

Counsel for the Petitioner: T.V. RAJEEVAN

Counsel for the Respondents: GP FOR HOME

The Court made the following:

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ORDER:

Petitioner claims to be a financier of the Auto bearing No.AP 13 V
5457. Petitioner has filed an additional affidavit vide WPMP.No.6008 of 2015

stating that in the affidavit filed along with the writ petition, correct facts were not set out, hence, the additional affidavit is filed. Petitioner states that he has financed for the said auto to one Mohd. Shaik and as the said person could not pay the hire purchase amount he returned the auto with a no objection certificate. Thereafter, one Mr. P. Raj Kumar had taken the said auto on hire purchase agreement dated 14.11.2011 and he in turn had given the said auto on rent to one Mr. Ghouse for plying. The said Ghouse is said to have been implicated as a prime accused in Cr.No.228 of 2012 on the file of the Bowenpally Police Station under Section 307 of the Indian Penal Code and the said vehicle is in the custody of police. Petitioner states that since he is the financier, as per the RTA records, the ownership of the vehicle vests in him and as such, he is entitled to seek release of the vehicle.

2. Petitioner, thereafter, filed an application under Sections 451 and 457 of the Criminal Procedure Code vide MP.No.3934 of 2012 on the file of the XI Additional Chief Metropolitan Magistrate, Secunderabad and the said application is stated to have been returned on 26.09.2012 with an endorsement that the owner of the vehicle has to file the petition. Hence, the petitioner has filed the present writ petition seeking release of the vehicle.

3. Learned Assistant Government Pleader for Home, on instructions, submits the Cr.No.228 of 2012 is already investigated and charge sheet is also filed before the learned XI Additional Chief Metropolitan Magistrate, Secunderabad. Learned Assistant Government Pleader also submits that the vehicle does not stand in the name of the petitioner and hence, the application was not entertained earlier.

4. Evidently, the vehicle is under hire purchase agreement and the petitioner has financed the said vehicle. The copy of the certificate of registration under Form 23, produced along with the writ petition, shows the RTA's endorsement that the said motor vehicle described is subject to hypothecation agreement with Jai Nakoda Automobile Finance under hire

purchase agreement dated 08.07.2010 and the signature of the financier is also found dated 09.07.2010.

It is well settled that in a case of hire purchase contract, the ownership of the vehicle remains with the financier as long as the borrower has liability to pay the EMI's fixed and as such, since the petitioner's name is found in the RTA's records, as a hire purchaser agreement holder, the request of the petitioner for release of the vehicle is required to be considered on its own merits and in accordance with law.

Since the application of the petitioner, being MP.No.3934 of 2012, was not considered, the petitioner is at liberty to represent the said original MP.No.3934 of 2012 before the XI Additional Chief Metropolitan Magistrate, Secunderabad together with the copy of this order and thereafter, the said Court shall consider the said application on its own merits and pass appropriate orders in accordance with law.

The writ petition is accordingly disposed of. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 6, 2015
DSK