

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.837 of 2016

M/s.Cholamandalam Investment and  
Finance Company Limited,  
Having registered office at  
'Dare House', No.2,  
N.S.C. Bose Road,  
Parrys, Chennai - 600 001.  
and having branch office at  
New No.6, 2<sup>nd</sup> Floor,  
Annasalai, (Opp to Voorhees School),  
Vellore - 632 001.  
represented by its authorised signatory  
Mr.S.Sivasubramanian ... Petitioner

Vs.

1.State by  
The Sub-Inspector of Police,  
Veppankuppam Police Station,  
Vellore.

2.R.Venkatesan  
S/o.Renu ... Respondents  
(second respondent impleaded as per  
order dated 17.11.2016 passed in  
Crl.M.P.No.7355 of 2016)

Criminal Revision Case filed under Sections 397 and 401  
Cr.P.C. against the order of learned Judicial Magistrate III,  
Vellore, passed in C.M.P.No.2611 of 2015 in C.M.P.No.422 of 2014  
in Crime No.166 of 2013 on 09.03.2016.

For Petitioner : Mr.N.Santhosh Nagarajan

For Respondent : Mr.K.Madhan  
Government Advocate [Crl.side] [R1]

O R D E R

This revision arises against the order of learned Judicial  
Magistrate III, Vellore, passed in C.M.P.No.2611 of 2015 in

C.M.P.No.422 of 2014 in Crime No.166 of 2013 on 09.03.2016.

2. Petitioner is a non-banking finance company, which had financed the purchase of TATA ACE bearing registration No.TN-18-D-9682 under a hypothecation loan agreement. Upon the borrower making defaults in repayment of loan, the petitioner proceeded to seize the vehicle, at which instance the petitioner learnt that the hypothecated vehicle had been seized by police, in connection with Crime No.166 of 2013 for offences u/s.4(1)aaa, 4 (1-A)ii of Tamil Nadu Prohibition Act on the file of first respondent. Petitioner moved C.M.P.No.442 of 2014 on the file of learned Judicial Magistrate III, Vellore, Vellore District, seeking return of the vehicle. Court below, under orders dated 05.06.2014, directed interim custody of the vehicle to the petitioner inter alia on condition that, '(1) the petitioner shall not alter, sale of mortgage the property to any third party till the disposal of the case, (2) the petitioner shall produce the property before court as and when directed to produce the same, (3) the petitioner shall execute a bank security for a sum of Rs.2 lakhs and (4) Photo of the property with CP No Visible to be filed'. Thereafter, petitioner moved C.M.P.No.2611 of 2015 seeking permission to sell the vehicle. Court below, under orders dated 09.03.2016, dismissed such petition. Hence, this revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for first respondent.

4. In decision of this Court in Sundaram Finance Ltd., v. The State of Tamil Nadu [2011 (1) MWN (Cr.) 437], this Court, placing reliance on the decision of the Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat (2003 (1) CTC 175), observed as follows:

"11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of

the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all."

5. The Criminal Revision Case shall stand allowed. The order of learned Judicial Magistrate III, Vellore, passed in C.M.P.No.2611 of 2015 in C.M.P.No.422 of 2014 in Crime No.166 of 2013 on 09.03.2016, shall stand set aside.

Court below shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon production, Court below shall cause photographs of the vehicle to be taken and record panchanama thereof. The panchnama 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. Petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchanama prepared shall be read as evidence in lieu of marking of the vehicle.

sd/  
Assistant Registrar(CCC)

/true copy/

Sub Assistant Registrar

gm  
To

1.The Judicial Magistrate III,  
Vellore.

2.The Sub-Inspector of Police,  
Veppankuppam Police Station,  
Vellore.

3.The Public Prosecutor,  
High Court,  
Madras.

+1cc to Mr.N.Santhosh Nagarajan, Advocate SR.No.67357

Cr1.R.C.No.837 of 2016

NRI (CO)  
GN(21/02/2017)