

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.107 of 2017

Bhuvaneswari Finance
Rep by M.Rajendran

...Petitioner

Vs.

1. The State rep. by
The Sub Inspector of Police,
District Crime Branch,
Dharmapuri.
(Crime No.3 of 2016)

2. Chinasamy

3. S.Selvam

...Respondents

Prayer:- Criminal Revision Petition has been filed under Section 401 Cr.P.C., to call for the records relevant to the order in Crl.M.P.No.1051 of 2016 dated 28.11.2016 passed by the Learned Judicial Magistrate No.2, Dharmapuri set-aside the same and thereby allow the Criminal Revision Petition.

For Petitioner : Mr.R.Sundarapandiyan

For Respondents : Mr.R.Sekar
Government Advocate (Crl.Side) for R1

R2 & R3 - No appearance.

ORDER

This revision case has been filed against the order dated 28.11.2016 passed by the learned Judicial Magistrate No.2, Dharmapuri in Crl.M.P.No.1051 of 2016 in Crime No.3 of 2016.

2. The petitioner claimed to be a financier and he has financed for the lorry with Registration No.KA01B2311 (Taurus Lorry), when the accused produced the same before the petitioner. However, it is the case of the prosecution that the said lorry was belonging to the defacto complainant and by cheating him, it was alleged, that the accused had transferred the lorry in his name and by the strength of the same, he had produced the lorry before the petitioner as his own lorry and received a sum of Rs.3,75,000/- from the petitioner. After receiving the said amount of Rs.3,75,000/- from the petitioner, the accused seems to have paid only a sum of Rs.2,00,000/- to the defacto complainant, who is the owner of the vehicle and he has not paid the remaining amount. Moreover, the case of the defacto complaint is that the lorry was given to the accused only to arrange loan by showing the said lorry as security. In respect of arranging loan, an agreement was entered into between the accused and the defacto complainant. However, the accused mischievously transferred the vehicle in

his name and only on that strength, he borrowed a sum of Rs.3,75,000/- from the petitioner.

3. Therefore, a case was registered on the basis of the complaint given by the defacto complainant and after completion of investigation, charge sheet has been filed by the respondent police and the same was taken on file as C.C.No.215 of 2016 by the learned Judicial Magistrate Court No.II, Dharmapuri. Only in that circumstance, the petitioner has come forward by filing an application before the lower Court under Section 451 of Cr.P.C. to seek interim custody of the said lorry. The said petition filed by the petitioner was rejected by the impugned order of the Court, as against which, the present revision has been filed.

4. Mr.R.Sundarapandiyar, learned counsel for the petitioner submits that even four years back, according to the petitioner, the worth of the lorry was Rs.5,50,000/- and after four years, though the lorry will not be worth more than Rs.3,75,000/-, the entire amount had been given to the accused on the date of the advancement of the loan. Hence, the lorry was transferred in the name of the accused and he had in fact produced the R.C. Book in that regard. Only, subsequently, the petitioner came to

know that the accused had taken the lorry as alleged by the defacto complainant and he had transferred the lorry in his name. Since the accused has shown the documents that the lorry stands in his name, as security of the loan by way of hire purchase agreement the petitioner advanced an amount of Rs.3,75,000/-. Even it is the admitted case of the defacto complainant that out of Rs.3,75,000/- a sum of Rs.2,00,000/- was paid by the accused. So far as the remaining amount as well as the transfer of lorry in the name of the accused, without the knowledge of defacto complainant is concerned, complaint has been filed and the charges has been laid against the accused persons.

5. Further, the learned counsel for the petitioner would submit that at any rate, now almost equal amount was paid by the petitioner who is an innocent financier, by way of hire purchase agreement and advanced a sum of Rs.3,75,000/-. However, since the lorry has been seized and it is under the Court custody, the body of the lorry got exposed in the sun light rain at any time and if the lorry continues to be in the custody of the Court, it will further get exposed in the sun light and rain and certainly the parts of the lorry will get repaired and the value of the lorry would also be reduced and after some time, the lorry would become un-conditional or

even un-plyable. Therefore in order to avoid the diminishing value of the lorry, the custody of the same has to be given to this petitioner as he has sufficient document through hire purchase agreement and if the custody is given to the petitioner, no prejudice would be caused either to the defacto complainant or to the accused. Therefore, the learned counsel for the petitioner seeks interference of this Court on the impugned order whereby the claim was rejected.

6. Per contra, Mr.R.Sekar, learned Government Advocate (Crl.Side) appearing for the respondent would submit that the charge sheet has already been filed in this case and it is ready for trial. More over, admittedly the petitioner is not the owner of the vehicle. According to the defacto complainant, he is the owner of the vehicle and without his knowledge the lorry was taken by the accused person and against him the charge sheet has been laid. The accused is not the owner of the vehicle and the petitioner is a financier and by way of hire purchase agreement he has given advance loan amount of Rs.3,75,000/- for which the petitioner has not taken ownership and he could not seek interim custody of the vehicle. The learned Government Advocate has also submitted that while interim custody of the vehicle, the petitioner may tamper and even sell the

vehicle as the original R.C. Book is with the petitioner only. Therefore, the learned Government Advocate says that the order passed by the lower Court requires no interference of this Court.

7. Heard learned counsel for both sides and perused the materials placed before this Court.

8. It is the case of the defacto complainant that he is the owner of the "Taurus lorry" and without his knowledge, the same has been transferred in the name of the accused and in view of that, he gave a complaint before the respondent police. After investigation, the respondent police filed charge sheet before the concerned Court. Insofar as the claim of the petitioner is concerned, he is only a financier and he claims that he has advanced loan by way of hire purchase to the extent of Rs.3,75,000/-. As against the said lorry, the accused person received the money and part of that money was given to the original owner i.e, the defacto complainant. It is the case of the petitioner that because of the conflict between the defacto complainant and the accused, the money invested by the petitioner by advancing loan by way of hire purchase on the vehicle cannot be defeated.

9. It is also the case of the petitioner that the registration certificate of the lorry i.e, R.C. Book is also under the custody of the petitioner and therefore without R.C. Book no one can ply the vehicle. Moreover it can only to be decided by the lower Court after Trial, in respect of the charges framed against the accused, who claimed to be the present owner of the vehicle. Till such time, the vehicle will get exposed in sun light and rain and certainly the value of the motor vehicle would get diminished and even after some time the vehicle will become unusable. Therefore, on these circumstances the petitioner has filed this petition seeking interim custody of the vehicle.

10. It is an admitted fact that the petitioner is not the owner of the vehicle and he has only a hire purchaser and he has claimed that he has advanced a sum of Rs.3,75,000/- to the accused person. On the other hand, it is an admitted case of the defacto complainant that out of Rs. 3,75,000/- advanced by the petitioner, the accused person had given only a sum of Rs.2,00,000/- to the defacto complaint. Therefore, if at all any money paid by the petitioner to the accused person, which had not been given to the original owner i.e, defacto complainant that is Rs.1,75,000/- only. Therefore, if the said money was also given to the original owner,

ultimately, after the trial, it is for the original owner i.e, the defacto complainant to settle the amount to the petitioner. However, in the meanwhile, if the vehicle in question is given by way of interim custody to the petitioner, since the R.C. book is already with the petitioner, he may tamper the vehicle and if he tampers or sells the vehicle, it may not be recovered by the defacto complainant, who claimed to be the original owner of the vehicle.

11. Therefore, considering all the facts, the following order is passed in the Criminal revision case:-

(i) The vehicle in question viz., the Taurus Lorry with Registration No. KA01B2311 seized and under the custody of the Court below shall be given interim custody to the petitioner, on condition that the petitioner shall deposit a sum of Rs.1,75,000/- within a period of two weeks from today (31.07.2017) to the credit of C.C.No.215 of 2016 on the file of the Judicial Magistrate No.II, Dharmapuri.

(ii) There shall be a further condition that the petitioner shall not tamper the vehicle or change any part of the vehicle without the permission of the Court.

(iii) There shall be a further condition that as and when the

vehicle is required to be produced, the same shall be produced by the petitioner before the Trial Court or before the respondent/investigating agency without fail.

(iv) The original R.C. Book shall be shown before the Court below on the first working day of every month at 10.30 a.m. and the endorsement should also be made.

12. With these conditions, the vehicle in question shall be given interim custody to the petitioner. With these directions, the criminal revision is disposed of.

31.07.2017

Index :Yes/No
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Crl.R.C.No.107 of 2017

R.SURESH KUMAR, J.

This matter is posted today before this Court under the caption 'For Being Mentioned' at the instance of the learned counsel for the petitioner.

2. This Court, at paragraph 11(i) of the order dated

31.07.2017 in Crl.R.C.No.107 of 2017, has directed the petitioner to comply with the condition within a period of two weeks from the date of that order i.e, 31.07.2017. However, it is brought to the notice of this Court by the learned counsel for the petitioner that the copy of the order dated 31.07.2017 has been delivered only after the expiry of two weeks from 31.07.2017 and therefore, the petitioner could not comply with the said order.

3. In view of the said submission made by the learned counsel for the petitioner, the words "within a period of two weeks from today (31.07.2017)" shall be read as "within a period of two weeks from the date of the receipt of a copy of this Order".

29.08.2017

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Note : Registry is directed
to issue order copy
on or before 30.08.2017

WEB COPY

R.SURESH KUMAR, J.

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To

1. The Judicial Magistrate No.2,
Dharmapuri
2. The Sub Inspector of Police,
District Crime Branch,
Dharmapuri.
3. The Public Prosecutor,
High Court, Madras.



Crl.R.C.No.107 of 2017

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