

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2017

CORAM:

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

Crl.R.C.Nos.462 of 2014 and 337 of 2016

Sabu

S/o.Joseph

.. Petitioner in bot revisions

vs.

1.State represented by
The Inspector of Police,
Cherambadi Police Station,
Pandalur Tk. Nilgiris.

2.Dhanapath Raj
S/o.Gowthamchand

3.Kamala
W/o.Ilangovan

.. Respondents in both revisions

Criminal Revisions filed under Section 397 and 401 Cr.P.C.
against the orders of learned Judicial Magistrate, Gudalur,
passed in C.M.P.Nos.941 and 955 of 2014 in Crime No.90 of 2013
dated 14.03.2014.

For Petitioner : Mr.P.Prakash Paul

For Respondents : Mr.M.Mohammed Riyaz,
Government Advocate [Crl.side][R1]
Mr.J.Franklin [R2 & R3]

C O M M O N O R D E R

These revisions arise against orders of learned Judicial
Magistrate, Gudalur, passed in C.M.P.Nos.941 and 955 of 2014 in
C.C.No.190 of 2013 dated 14.02.2014.

2. The vehicle viz., Mahindra and Mahindra Jeep, bearing
registration No.TN-43-Z-0178 has been seized by first respondent
in connection with the case in Crime No.90 of 2013. Petitioner
and second respondent moved C.M.P.Nos.941 and 955 of 2014
seeking return thereof. Court below, while declining return of

vehicle to petitioner has granted the said relief to second respondent. Aggrieved, petitioner has filed the present revisions.

3. Heard learned counsel for petitioner, learned Government Advocate [Crl.side] for first respondent and learned counsel for respondents 2 and 3.

4. Court below has placed the vehicle in the hands of the second respondent informing that such respondent was the financier of the vehicle and has seized the same very long ago. In the instant case, the vehicle which was in the possession of the third respondent had been seized by first respondent in connection with Crime No.90 of 2013. Petitioner had sought return thereof. Similarly, second respondent had also sought return of the said vehicle. Petitioner had purchased the vehicle availing finance from the second respondent. The vehicle has been hypothecated in favour of such respondent. According to second respondent, the vehicle was seized by him on failure of the petitioner to duly effect payment of monthly instalments. Thereafter, second respondent has placed the vehicle in the hands of the third respondent from whom the same has been seized. Petitioner is the registered owner of the vehicle. The endorsement in the registration certificate of the vehicle in favour of the second respondent is only towards informing his right of hypothecation there regards. Second respondent has taken law into his own hands in effecting seizure of the vehicle. The reason informed by Court below towards return of vehicle to second respondent in effect amounts to judicial approval of an unlawful act. The proper course for the second respondent to have followed would have been to approach the civil Court towards exercising his right of hypothecation. Persons cannot be permitted to take law into their own hands and possession of property thereby derived cannot be accepted.

5. Learned counsel for second respondent submits that presently the period of limitation within which the second respondent ought to have exercised his rights through proper forum has expired. Second respondent will only be paying a price for his own wrong doing.

6. In the circumstances above stated and following the decisions of the Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat* (AIR 2003 Supreme Court 638) and *General Insurance Council V. State of Andhra Pradesh* in 2010 (3) Supreme Pg. 317, this Court directs as follows:

The vehicle viz., Mahindra and Mahindra Jeep, bearing registration No.TN-43-Z-0178, shall be placed in the custody of the petitioner after complying with the following:

i) Court below shall cause photographs of the vehicle to be taken and record panchanama thereof, the photographs taken shall be read as secondary evidence during trial and production of the vehicle shall be dispensed with.

ii) The vehicle shall then be returned to petitioner, who shall be at liberty to deal with the same in such manner as considered appropriate.

7. The above order is not determinant of the ownership or other rights in respect of the vehicle.

The Criminal Revisions shall stand allowed. The orders of learned Judicial Magistrate, Gudalur, passed in C.M.P.Nos.941 and 955 of 2014 in Crime No.90 of 2013 dated 14.02.2014, shall stand set aside.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gm

To

- 1.The Judicial Magistrate,
Gudalur.
- 2.The Inspector of Police,
Cherambadi Police Station,
Pandalur Tk. Nilgiris.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr. Prakash Paul , Advocate, Vide SR.No. 1746

CrI.R.C.Nos.462 of 2014 and 337 of 2016

MV(CO)
VR(14/02/2017)