

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :17.08.2017
PRONOUNCED ON : 11.12.2017

CRL.RC. No.381 of 2013

R.Chinnasamy .. Petitioner/Petitioner/3rd Party

..Vs..

1.The Sub-Inspector of Police,
Thalaivasal Police Station, Salem Dt.
(Crime No.839 of 2011)

... 1st Respondent/Complainant

2.Kannan

... 2nd Respondent/Defacto Complainant

3.The Branch Manager,
KOTAK MAHINDRA BANK LTD,
Plot No.12, Bharathi street,
Near ANS Jewellery,
Alagapuram, Omallur Main Road,
Salem 636 004.

(Impleaded the 3rd respondent as per order
of this Hon'ble Court dt.4.7.14 in M.P.1 of 14)
... Respondents

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to call for the records and order to interim custody of the vehicle tractor bearing TN 54Y 9041 (Engine No.NAB 0391, Chasis No.NAB 0391) to the petitioner by setting aside the order passed by the Judicial Magistrate No.2, Attur in C.M.P.No.1565 of 2012 by order dated 9.7.2012.

For Petitioner :Mr.B.Vasudevan

For R1 :Mr.R.Sekar, Govt.Advocate

For R2 :Mr.C.Munusamy

For R3 :No appearance
(Notice served)

ORDER

This Criminal Revision Petition is filed under Section 397 read with Section 401 of Cr.P.C, to call for the records and order to interim custody of the vehicle (tractor bearing TN 54 Y 9041(Engine No.NAB 0391, Chasis No.NAB 0391) to the petitioner by setting aside the order passed by the Judicial Magistrate No.2, Attur in C.M.P.No.1565 of 2012 by order dated 9.7.2012.

2. The petitioner/claimant before the Judicial Magistrate, Attur is the Revision Petitioner herein.

3. The Revision Petitioner herein filed C.M.P.No.1565 of 2012 in Crime No.839 of 2011 (C.P.No.191 of 2012) under Section 451 of Cr.P.C., for interim custody of the tractor and the same was dismissed by the Judicial Magistrate, Attur and hence, the present revision.

4. The brief facts of the case leading to the filing of this Revision is as follows:-

i) The Revision Petitioner is the petitioner in C.M.P.No.1565 of 2012 u/s.451 Cr.P.C to return of vehicle (Tractor in Red Colour 575 D1 bearing Engine No.NAB 0391 Chasis No.NAB 0391), the 2nd respondent, the defacto complainant also filed petition u/s.451 Cr.P.C in C.M.P.No.1564 of 2012 to return the said vehicle to him, the Judicial Magistrate No.2, Attur was pleased to dismiss the petition in C.M.P.No.1565 of 2012, ordered interim custody to the 2nd respondent in C.M.P.No.1564 of 2012 dated 9.7.2012. According to the petitioner, the 1st respondent registered a case in Crime No.839 of 2011 dated 18.12.2011 for the offence under Section 420 I.P.C., took place on 22.06.2011 against one Arasu alias Tamilarasan, on a complaint of 2nd respondent.

ii) The petitioner produced the said vehicle before the 1st respondent on 4.6.2012 and the same was produced before the Judicial Magistrate No.2, Attur on 08.06.2012.

iii) The 2nd respondent hypothecated the said vehicle with Kotak Mahendra Bank on 21.05.2010 as per agreement No.635985 and agreed to pay Rs.2,94,943/- in 24 installments, but paid only 6 installments till 14.06.2011, so Kotak Mahendra Bank seized the said vehicle TN 59Y 9041 (Engine No.NAB 0391, Chasis No.NAB 0391) and informed to the 2nd respondent by telegram on 3.1.2012, as per agreement dated 30.01.2012 with the said Bank, then vehicle is handed over to the petitioner on 1.2.2012.

iv) The 2nd respondent gave complaint on 18.12.2011 for occurrence dated 22.06.2011, there is a delay of 6 months in giving complaint. The petitioner is bonafide purchaser from H.P.Holder Kotak Mahendra Bank, the 2nd respondent is defaulter who is not entitled to custody of the vehicle. The said Kotak

Mahindra Bank repossessed the vehicle and informed on 3.1.2012 to 2nd respondent, then received Rs.3,25,000/- from the petitioner on 30.01.2012. The 2nd respondent paid only 6 installments out of 24 installments (Rs.1,06,750/-)

5. The learned counsel for the petitioner has submitted that the case property-the tractor was originally hypothecated with the Kotak Mahendra Bank and as the second respondent failed to pay the E.M.I. It was re-possessed by the Kotak Mahendra Bank and subsequently, it was sold to him on 3.1.2012 for a sum of Rs.3,25,000/- and hence, an interim custody has to be given to him and the trial Court has committed an error in not appreciating the factum of the re-possession by the respondent No.3, Kotak Mahendra Bank the hirer and he sought to set aside the order and for direction to give the interim custody of the tractor to him.

6. Per contra, the second respondent-Kannan, who is a defacto-complainant in Crime No.839 of 2011 contended that he is a true and registered owner of the case property-Tractor and he purchased the same under the Hire purchase agreement on 21.05.2010 and paid the E.M.I upto June 2011 and one person by named Tamilarasan as cheated him and taken away the vehicle and hence, he filed a complaint on 21.06.2011 before the first respondent-Police, Thalaivasal Police Station and on 24.06.2011, he give the public notification in 'Dhinathanthi' regarding missing of tractor and even after 6 months, the police would not trace out and subsequently, the registered F.I.R in Crime No.839 of 2011 on 18.12.2011. Since, the police are not taking sufficient steps to detect the vehicle he has filed another M.P.No.932 of 2011 for a direction before the Judicial Magistrate Court.

7. Pursuant to which, the first respondent-police has detected the case and produce the tractor before the Court in case property C.P.No.191 of 2012 and hence, he has filed the C.M.P.No.1564 of 2012 who hand over the possession to him. By an common order, the Judicial Magistrate ordered the interim custody of the case property to the Kannan-the second respondent herein and as against the order passed in C.M.P.No.1564 of 2012, the petitioner herein has not filed any revision petitioner and hence, prayed for dismissal.

8. The learned Public Prosecutor has submitted that the second respondent is a registered owner. Immediately, after missing of the tractor, he has filed a complaint and initially, it was taken as a petitioner enquiry subsequently, F.I.R was registered in Crime No.839 of 2011 and as per the direction of this Court, the vehicle was produced before the Court and also stated that, the revision petitioner herein has fabricated documents in-conveyance with Kotak Mahendra as if certain

transaction has taken place and the case property was re-sold to the Revision Petitioner herein as on 3.1.2012 and the same could not be possible since the public auction of the re-possess vehicle was given only on 27.01.2012 by public notification. When that being the case, sale of the property in favour of the revision petitioner as on 2.1.2012 is nothing but manipulation.

9. After hearing the submission of all the parties and after going through the records and the order passed by the trial Magistrate which is under challenged before this Court, it is seen that admittedly, the second respondent-Kannan has purchased the vehicle under the hire purchase scheme floated by the Kotak Mahindra, Salem on 21.05.2010 and the tractor was assigned registration No.TN 54Y 9041 and he has remitted E.M.I on 15.06.2011 for a sum of Rs.18,510/-. Thereafter, the case property-tractor reported to be missing and also a public notification regarding missing of the case property-tractor was given followed by the registration of the F.I.R. Thereafter, based upon the Court direction, the first respondent-police appeared to have seized the vehicle from the custody of the revision petitioner herein and produced before the Court in case property No.191 of 2012.

10. From the records produced before the trial Court, the trial Court gave a categorical finding that the second respondent-Kannan, who is the petitioner in C.M.P.No.1564 of 2012 is a registered owner as defined under the Motor Vehicles Act and also after going through the records produced by the present revision petitioner, who is a petitioner in C.M.P.No.1565 of 2012, who have come forward with a specific case that he has purchased the tractor from the Kotak Mahindra Bank, Salem branch by way of re-sale on 3.1.2012.

11.However, the records produced by the said revision petitioner herein goes to show that he has remitted the alleged cash amount on 30.01.2012. However, the paper publication for the re-sale of the tractor which is alleged to have been re-possessed by Kotak Mahindra Bank is only published on 20.01.2012. In the said notification for re-sale of the re-possess vehicle which is published on 20.01.2012 has given 10 days time for submitting the offer by the new purchaser for re-sale of the vehicle.

12. When that being the case, the claim of the present revision petitioner that he has purchased the vehicle on 3.01.2002 itself by paying the entire amount even before the public notification appears to be a bundle of manipulation to escape from the clutches of the law and it also appears to be the fact that the Kotak Mahindra Bank, Salem is colluded with the present revision petitioner in creating the papers as if a sale has been effected on 3.1.2012 itself. While, the public

notification for selling the re-possessed vehicle by way of public tender is published only on 20.01.2012 and the similar finding has been arrived by the trial Court is well considered and well merited and furthermore, it also remains to be stated that the alleged receipt said to have been given by the Kotak Mahindra Bank, Salem in favour of the petitioner is also anti dated to the said to be notification goes to show that both the revision petitioner as well as Kotak Mahendra Bank, Salem are hand in glove in creating a false document to cheat in order to take possession of the interim custody of the vehicle by abusing/misusing of the process of law.

13. The trial Court has considered the entire aspect and gave a specific finding that the second respondent is a registered owner as per Section 2(20) of the Motor Vehicles Act and disbelieved the documents produced by the revision petitioner herein and also gave a finding that the revision petitioner is using the vehicle without proper registration which is an offence punishable under Sections 158(2), read with 177 and 39(1) read with 192(2) of the Motor Vehicles Act and also directed the first respondent-police to register the case of under Section 420 I.P.C against both the revision petitioner as well as the person concerned in the Kotak Mahendra, Salem for cheating.

14. In view of the discussion supra, the above said directions of trial Magistrate appears to be well founded and well merited as the same does not call for any interference by this Court and hence, the plea of the revision petitioner that is a bonafide purchaser is stand exposed by his own document who is appears to have been created with conveyance of the Kotak Mahendra Bank, Salem and therefore, the Judicial trial Magistrate, Attur has properly directed the first respondent-police to register the case against the revision petitioner herein along with Kotak Mahendra Bank, Salem cannot be interfered with and hence, this Criminal Revision Petition is devoid of merits and liable to be dismissed.

15. In fine, the order passed by the Judicial Magistrate, Attur in C.M.P.No.1564 of 2012 in favour of the second respondent is hereby confirmed. The order of dismissal passed in C.M.P.No.1565 of 2012 against which this revision has been filed is hereby dismissed with a direction to the first respondent-police to complete the investigation and to file a charge sheet within a period of 8 weeks from today and on such report, the Judicial Magistrate, Attur is directed to complete the trial of the case within 3 months. Thereafter, the copy of this order is to be sent to Superintendent of Police, Salem for effective supervision and proper investigation in this matter in bringing

the culprits to stand before the criminal Court. With the above observations, Civil Revision Petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.2,
Attur.
 - 2.The Sub-Inspector of Police,
Thalaivasal Police Station, Salem Dt.
 - 2.The Branch Manager,
KOTAK MAHINDRA BANK LTD,
Plot No.12, Bharathi street,
Near ANS Jewellery,
Alagapuram, Omallur Main Road,
Salem 636 004.
 - 3.The Superintendent of Police,
Thalivasal Police Station, Salem
 - 4.The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.C.Munusamy, Advocate SR.No.87948

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KJ(CO)
GN(08/01/2018)

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