



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.07.2017
CORAM

THE HON'BLE MR.JUSTICE **V.BHARATHIDASAN**

Cr1.R.C(MD).No.480 of 2017

Manikandan ... Petitioner/Respondent

-Vs-

1.The Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.
Cr.No.135/2017

... Respondent/Petitioner

2.Sri Equipment Finance Ltd.,
Head Office Calcutta,
Branch at No.2, First Floor,
No.67 G/3, Sakkar Towers,
South Bye-pass Road,
New Bus Stand (Near),
Tirunelveli - 627 005,
Through its Power Agent Rajasubramanian,
S/O.Sri.S.Pitchaiah,
Senior Executive,
Employee Code No.104 135.

... Respondent/Respondent

(R2 impleaded as per order of this
Hon'ble Court made in Cr1.M.P.
(MD)No.5540/2017 in Cr1.RC(MD)
No.480/2017, dated 29.06.2017)

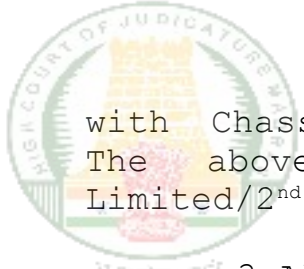
Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order of the Judicial Magistrate, Cheranmahadevi in Cr.M.P.No.2153 of 2017, dated 07.06.2017.

For Petitioner	: Mr.R.Rajeshkumar
For R1	: Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor
For R2	: Mr.M.Sankar

O R D E R

Challenging the order dismissing the petitioner's application filed under Section 451 Cr.P.C seeking return of the vehicle, the present revision has been filed.

<https://hcservices.ecourt.gov.in/hcservices/> According to the petitioner, he is a registered owner of the lorry 770 Model Bockhoe loader bearing Reg.No.TN76 AX 2620,



with Chassis No.NKJ00770KGKH17630 and Engine No.4H32031620452. The above lorry has been hypothecated to Sri Equipment Finance Limited/2nd respondent herein.

3. Alleging that the petitioner has committed default in payment of dues, the second respondent has seized the vehicle and placed the vehicle in a private yard. Thereafter, the petitioner has entered into the yard and removed the vehicle on the ground that the vehicle has been illegally removed by the second respondent. Hence, the owner of the Vehicle Yard has filed a complaint against the petitioner and based on the complaint, the respondent police registered a case in Cr.No.135/2017 under Sections 147, 448, 379 and 506 (ii) of I.P.C. Thereafter, the petitioner filed a petition, seeking return of vehicle claiming to be the registered owner of the vehicle, wherein, the second respondent herein/Financier in whose favour, the vehicle has been hypothecated, also seeks interim custody of the vehicle by filing a petition in Cr.M.P.No.1918 of 2017. But, the Court below dismissed the petition holding that there are rival claims over right of the vehicle and investigation is also in preliminary stage and the issue cannot be decided at this stage. Now, challenging the said order, this revision has been filed.

4. I have heard R.Rajeshkumar, learned counsel appearing for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor, appearing for the first respondent and Mr.M.Sankar, learned counsel appearing for the second respondent and perused the records carefully.

5. The learned counsel appearing for the petitioner submitted that the petitioner is a registered owner of the lorry and the second respondent herein is a financier, in whose favour the vehicle has been hypothecated. Even assuming that there is any default, he has no right to seize the vehicle directly and he has to go through legal process. But, the second respondent illegally seized the vehicle. Hence, the petitioner had taken back his vehicle. Thereafter, he filed the petition for return of vehicle. It is settled law that the vehicle cannot be handed over to the hypothecated owner and the same can only be returned to the registered owner.

6. Per contra, the learned counsel appearing for the second respondent has contended that the petitioner has hypothecated the vehicle with the Finance Company and obtained loan. Thereafter, he defaulted in paying loan amount. In the above circumstances, the Finance Company seized the vehicle and placed the vehicle in the custody of a private vehicle yard and the petitioner has illegally removed the vehicle from the yard. Hence, a complaint <https://hcservices.tn.gov.in/hcservices/> According to him, being a financier in whose favour the vehicle has been hypothecated, the second respondent alone is entitled to get back the vehicle.



7.I have considered the rival submissions.

8.Admittedly, the petitioner is a registered owner and the vehicle has been hypothecated to the second respondent, who is a financier. There is a dispute regarding repayment of loan amount, which is a civil dispute. Now, the question to be decided is whether the second respondent in whose favour the vehicle has been hypothecated is entitled to seek interim custody of the vehicle.

9.In a similar circumstance, this Court in CrI.R.C.No.413 of 2006, [M/S Sampathraj Jain Finance rep. by Power agent Suresh Kumar Vs. State Represented by Inspector of Police and another] dated 04.01.2011, after considering the judgment of the Honourable Supreme Court reported in 2008(2) MLJ (CrI) 631 (SC), has held as follows:-

" 12.The legal ratio laid down in the above authorities cited on both sides, would reveal that there is difference between the hire purchase agreement holder having been registered as registered owner of the vehicle in the registration certificate and the individual is shown as the registered owner and the name of the financier under the hire purchase agreement is just mentioned in the registration certificate. In the cases falling under the first case, the financier under the hire purchase agreement in his capacity as the holder of the registration certificate is entitled to get the interim custody of the vehicle. In the latter case, he is only a financier rendering financial assistance to the owner of the vehicle for the purchase of the vehicle and is not entitled to seek interim custody of the vehicle by enforcing the right of repossessing the vehicle under the financial arrangement between the two. That is why, the Supreme Court in the other set of judgments referred to in the foregoing para 7, is pleased to hold that interse civil liability between the registered owner of the vehicle and the financier bank or financial institution as the case may be, with or without guarantor is outside the scope of criminal proceedings and the same cannot be taken cognizance and be enforced through criminal process of law. In so far as the present case is concerned, as the accused is recorded as the registered owner of the vehicle, the petitioner/financier who is third party to the criminal proceedings, is not entitled to seek interim custody of the vehicle sought for in the petition under revision is rightly negatived by the trial Court and this Court finds no



manifest error in law or procedure in the order passed by the trial Court which calls for any interference by this Court."

10. In view of the same, I am of the view that the second respondent, who rendered financial assistance, is not entitled to seek interim custody of the vehicle, on the other hand, the petitioner, who is the registered owner of the vehicle is entitled to get back the same, who is a registered owner.

11. Considering the fact that the vehicle has been seized on 16.04.2017 and it is in the custody of respondent police and the value of the vehicle would be deteriorated, if the same is exposed to sun and rain, I am inclined to set aside the impugned order, passed by the learned Judicial Magistrate, Cheranmahadevi in CrI.M.P.No.2153 of 2017, dated 07.06.2017, and this Criminal Revision Case stands allowed.

12. The vehicle viz., Lorry 770 Model Bockhoe loader bearing Reg.No.TN76 AX 2620 and Chassis No.NKJ00770KGKH17630 and Engine No.4H32031620452 is directed to be handed over to the revision petitioner. The Court below is directed to return the vehicle to the petitioner herein with the following conditions:-

i) The Petitioner shall produce proof of ownership of the vehicle;

ii) The Petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) with two sureties to the satisfaction of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District;

iii) The petitioner shall surrender the R.C.Book and the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District is at liberty to return the R.C.Book for renewal of the registration or for insuring the vehicle. The R.C Book can be obtained from the court by filing a petition and after the accomplishment of the purpose, the same should be returned to the court; and

iv) the petitioner shall also file an affidavit of undertaking to the effect that:

a) he will not alienate the vehicle without obtaining an order from the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District;

b) he will produce the said vehicle before the Court as

summoned to produce the same; and



c) no major alteration excepting the necessary repairs to make the vehicle road worthy shall be made.

13. However, it is always open to the second respondent/Financier to initiate civil proceedings against the petitioner for recovery of loan amount, if any.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Cheranmahadevi.

2. The Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.Rajeshkumar, Advocate SR.No. 65403

Cr1.R.C (MD) No.480 of 2017
13.07.2017

VS

JM/SKN RSK/SAR 4/19.07.2017/5P/5C