

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 13.12.2017****CORAM:****THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED****Cr1.RC(MD)No.776 of 2017**

Kumar

: Petitioner

Vs.

1.State Rep.by  
The Inspector of Police,  
District Crime Branch,  
Police Station,  
Sivagangai District  
(Crime No.20 of 2015)

2.D.Jayapal

3.Arivu @ Arivuchundar @ Arasu

: Respondents

\*(R2 & R3 impleaded vide order  
dated 24.10.2017)

Prayer: Revisions are filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order passed in Cr.M.P.No.3591 of 2017 in Crime No.20 of 2015, dated 01.09.2017 on the file of the learned Judicial Magistrate No.II, Sivagangai and to return the red colour BMW (L.M.V) Car, bearing Temporary Registration No.TN-22-TMP-2037.

For Petitioner

: Mr.V.Kannan

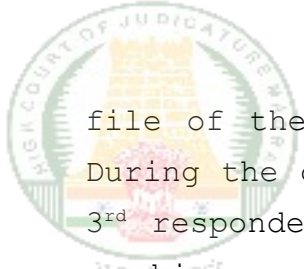
For Respondent No.1

: Mr.C.Mayilvahana Rajendran  
Addl.Public Prosecutor**O R D E R**

The Criminal Revision has been filed praying to set aside the order passed in Cr.M.P.No.3591 of 2017, in Crime No.20 of 2015, dated 01.09.2017, on the file of the learned Judicial Magistrate No.II, Sivagangai and to return the red colour BMW (L.M.V) Car, bearing Temporary Registration No.TN-22-TMP-2037.

2. The Criminal Revision is taken up for final disposal, in the admission stage itself with the consent of either side.

3. An FIR has been registered in Crime No.20 of 2015 for the offences under Sections 406, 420 & 120(b) of IPC., on 16.09.2015, on the



file of the respondent Police and investigation of the case is pending. During the course of investigation, one of the accused, who is arrayed as 3<sup>rd</sup> respondent in this Revision, was arrested and he tendered confession on his own volition. BMW Car, bearing Engine No.0015Y001 and Chassis No.WBA3F 37040NP11901 was seized and was produced under P.R.No.43 of 2017 and the said car was kept in custody.

4. Admittedly, as per the records, the 2<sup>nd</sup> respondent is the owner of the said car and he is not an accused in the criminal case. The petitioner herein is the 3<sup>rd</sup> party to the criminal proceedings and claim ownership over the seized BMW Car, as financier of the said car, which was purchased on hypothecation by the 2<sup>nd</sup> respondent herein. The petitioner filed a petition in Cr.M.P.No.3591 of 2017, before the learned Judicial Magistrate No.II, Sivagangai, under Section 451 of Cr.P.C., for interim custody of the said car, having temporary Registration No.TN-22-TMP-2037. Permanent Registration No. Nil., bearing Engine No.0015Y001 and Chassis No.WBA3F 37040NP11901. The respondent Nos. 2 and 3 are not the parties to the interim custody proceedings filed before the learned Judicial Magistrate No.II, Sivagangai. Respondent Nos. 2 and 3 are newly impleaded parties in this Criminal Revision. The learned Judicial Magistrate No.2, Sivagangai, dismissed the above petition after hearing both sides. The present Criminal Revision is preferred by the petitioner / financier challenging the impugned order of dismissal in Cr.M.P.No.3591 of 2017 passed by the learned Judicial Magistrate No.2, Sivagangai, dated 01.09.2017.

5. The learned counsel appearing for the Revision Petitioner would submit that originally the 2<sup>nd</sup> respondent has purchased the said car by availing a loan of Rs.30,00,000/- from the petitioner / finance company and since the 2<sup>nd</sup> respondent did not pay the loan amount, as agreed by him, the petitioner company filed a petition before the Arbitrator, as per the loan agreement executed by the 2<sup>nd</sup> respondent herein, at Delhi and the same was awarded in favour of the petitioner on 22.12.2015 and thus, as on date, the petitioner is the only owner of the said BMW Red Colour Car and the said car is kept under the custody of the respondent No.1 and if the said car is not returned in time, it would be caused



6. The learned Additional Public Prosecutor appearing for the respondent, based on the counter statement filed by the respondent, would submit that the petitioner finance company even after getting a verdict from the Arbitrator, Delhi in the year 2015, has not taken any steps to get the vehicle from the owner of the vehicle (Respondent No.2) and it is not known as to how it came into possession of the accused from the real owner of the vehicle and the said vehicle was seized from the accused (Respondent No.3), whereas, the real owner (Respondent No.2. herein) is another person, who is not an accused in this case and without hearing the real owner it is not possible for the Court to take a decision to return the vehicle in terms of Section 451 of Cr.P.C., and if the case property is returned to the petitioner / 3<sup>rd</sup> party, he would not produce the same during trial and likely to sale the same.

7. I have perused the materials available on record. Heard and considered the rival submissions advanced by either side.

8. The seizure of new BMW Car from the 3<sup>rd</sup> respondent, who is also an accused in Crime No.20 of 2015, on the file of the respondent Police, was remanded under RPR No.43 of 2017, before the learned Judicial Magistrate No.2, Sivagangai and is now kept under the safe custody of the respondent No.1 herein. It is also admitted that the 2<sup>nd</sup> respondent herein is the real owner of the seized car in this case, but he has not taken any steps for getting custody of the seized car. The said car was seized from the possession of the 3<sup>rd</sup> respondent herein and the 3<sup>rd</sup> respondent has also not taken any steps for getting custody of the car. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents herein did not turn up in this proceedings after notice by this Court.

9. The counsel for the revision petitioner would contend that the petitioner herein is the financier, who advanced loan to the 2<sup>nd</sup> respondent herein for the purchase of the seized car and the 2<sup>nd</sup> respondent has committed default to pay instalments, as agreed, and the petitioner / financier become the owner of the seized car and he is legally entitled to get interim custody of the said vehicle. The petitioner / financier based on his claim of ownership of the vehicle in question under an Award, dated 22.12.2015 passed by the sole Arbitrator, <https://hcservices.ecourts.gov.in/hcservices/> of the petitioner herein against the 2<sup>nd</sup> respondent in this case.



10. On perusal of the said Award would show that the borrower, who is the 2<sup>nd</sup> respondent herein, was directed to pay a sum of Rs.31,39,475/- with further interest at 24% per annum from 23.09.2015, to the claimant / petitioner herein and the borrower was also directed to hand over the vehicle to the claimant in case the same is still in possession of the borrower. In the alternative, if a claimant has already repossess the vehicle, he is at liberty to dispose of the same after giving due notice to the borrower.

11. As per the above Award, the petitioner / financier is entitled to recover the amount, in terms of the Loan-cum- Hypothecation Agreement, dated 16.03.2015, and to repossess the vehicle in question from the borrower or any person in possession of the said vehicle. Even after passing the Award, dated 22.12.2015, the petitioner has not taken any steps to repossess the aforesaid vehicle from the borrower or any person, who is in possession of the said vehicle. The petitioner / financier has not taken any steps to realize the Award amount through proper civil forum. The statement of account in the name of the borrower / 2<sup>nd</sup> respondent herein in respect of the loan amount maintained and produced by the petitioner / finance company shows that even after passing the above Award, the borrower made payment in instalments till 01.07.2017 and the outstanding loan amount alone not discharged by the borrower, who is the 2<sup>nd</sup> respondent herein.

12. As on date, the vehicle in question is also not in possession of the 2<sup>nd</sup> respondent or the accused No.4 / respondent No.3. The said vehicle was seized from the 3<sup>rd</sup> respondent herein in a Criminal Case, which is still pending for investigation. Now, the vehicle is in custody of the Court in Crime No.20 of 2015 on the file of the respondent No.1. In the above stated circumstances, this Court has to decide the issue whether the petitioner, as financier, is entitled to maintain an application for return of the vehicle seized in a criminal case, as interim custody from the Court?.

13. The Petitioner contends that the 2<sup>nd</sup> respondent borrowed Rs.30,00,000/- from the petitioner finance company for the purchase of the vehicle in question under a Loan-cum- Hypothecation Agreement, dated 16.03.2015, executed by the 2<sup>nd</sup> respondent herein and since the 2<sup>nd</sup>



respondent has failed to discharge the loan amount fully, the petitioner / finance company become the owner of the seized vehicle, as per the Award passed in the Arbitration in which R2 was set ex-parte.

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14. The alleged Loan-cum-Hypothecation Agreement, executed by the 2<sup>nd</sup> respondent herein, is not produced by the petitioner herein. It is admitted by the petitioner that the petitioner has not taken any steps to realize the balance of loan amount or to re-possess the vehicle in question, in terms of the Award, from the 2<sup>nd</sup> respondent herein or any other person and even after passing the Award on 22.12.2015, the 2<sup>nd</sup> respondent is making payment till 01.07.2017 and the loan amount is not fully discharged.

15. The copy of the Insurance Policy produced by the petitioner for a period of insurance from 17.03.2015 to 16.03.2015 also shows that the insured vehicle new BMW 3 Series 320D, Engine No.0015Y001 and Chassis No.WBA3F 37040NP11901 stands in the name of the 2<sup>nd</sup> respondent herein. Hence, as per the Insurance Policy, the 2<sup>nd</sup> respondent herein is the owner of the said vehicle. Certificate of Registration of the seized vehicle or insured vehicle is not produced by the petitioner herein. It is stated that temporary Registration Number is also given to the said vehicle, but no proof is filed by the petitioner herein. Hence, the petitioner / finance Company is not the holder of Registration Certificate in respect of the seized vehicle. It has been held by this Court in the Judgment in Kamal Bothra Vs. State By Inspector of Police reported in (CDJ 2003 MHC 1239) that "Unless the financier has established his title over the said vehicle as against the R.C. owner in the competent Court of civil jurisdiction by an order of declaration that he is the title owner, he has absolutely no right to come forward to file an application of this sort claiming as though he is the owner of the vehicle. The financier is only a financier and he cannot become the R.C. owner by himself and it is only the R.C. owner who is entitled to file an application of this sort claiming interim custody of the vehicle and therefore, the petitioner being not a R.C. owner, is not at all entitled to get custody of the vehicle, much less interim custody, as contemplated under Section 451 of the Cr.P.C.

16. Further, in an unreported Judgment of the Principal Bench of this Court in Cr1.R.C.No.413 of 2006, dated 04.01.2011 (M/s. Sampathraj



Jain Finance, Rep. by power agent Suresh Kumar Vs. State represented by Inspector of Police, Central crime Branch, St.Thomas Mount Chennai and Another), it has been held that the financier, who is the 3<sup>rd</sup> party to the criminal proceedings, is not entitled to seek interim custody of the vehicle under Section 451 of Cr.P.C.,

17. In this case on hand also, the petitioner herein is only the financier, rendering finance assistance to the borrower for the purchase of the vehicle and he is not entitled to seek interim custody of the vehicle by enforcing the right of repossessing the vehicle under financial arrangement between the two.

18. Considering the above facts and circumstances of the case and also the dictum laid down by this Court in the above decisions, the petitioner, as financier, is not entitled to move an application for interim custody of the vehicle, which is said to be purchased as per the Loan-cum-Hypothecation Agreement executed by the 2<sup>nd</sup> respondent herein, this Court is of the considered view that no interference is called for in the impugned order passed by the learned Judicial Magistrate No.2, Sivagangai.

19. In the result, this Criminal Revision Case stands dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II,  
Sivagangai

2.The Inspector of Police,  
District Crime Branch,  
Police Station, Sivagangai District

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

+1cc to M/S.V.KANNAN, Advocate SR.No.92548.