



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl. R.C.(MD)No.14 of 2018

M.S.Sundaram Finance Ltd.,
Having its office at
No.21, Pattullos Road,
Having its Branch,
At Thadicombu Road, Dindigul,
Represented by its
Branch Manager,
Mr.P.Padmanabhan

... Revision Petitioner /Petitioner/
3rd Party

-Vs.-

1.State represented by
The Inspector of Police,
Vedasandur Police Station,
Vedasandur.

(Crime No.363 of 2016) ...1st Respondent/1st Respondent/
Complainant

2.R.Kalidoss ...2nd Respondent/2nd Respondent/ Owner

Prayer: Criminal Revision Case - filed under Section 397 r/w 401 Cr.P.C., to call for the records in Crl.M.P.No.3053 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Vedasandur and set aside the order dated 08.08.2017.

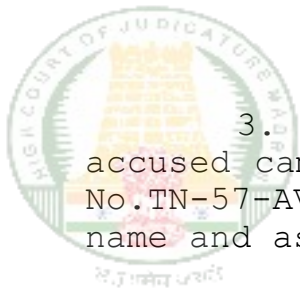
For Petitioner : Mr.S.Poornachandran

For R-1 : Mr.M.Asokan
Government Advocate

O R D E R

Today, Mr.C.Balasubramanian, Special Sub-Inspector of Police, Vedasandur Police Station, Vedasandur is present.

2. On the complaint lodged by Vembulu, the respondent police registered a case in Vedasandur PS Crime No.363 of 2016 on 24.08.2016 under Sections 294(b), 323 IPC and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014, (herein after referred to as 'the act'), against one Rajesh Kumar (A1) and Parasuraman (A2).



3. It is the case of the defacto-complainant that the accused came to his residence in a Hyundai Car bearing Registration No.TN-57-AV-8676 and abused the defacto-complainant by his caste name and assaulted him. Hence, the FIR.

4. After registration of the FIR, the police sent the FIR to the learned Judicial Magistrate, Vendasandur instead of sending it to the Special Court constituted under Section 14 of the act. The police seized the Hyundai Car and produced the same before the learned Judicial Magistrate, Vendasandur in RPR.No.79 of 2016.

5. It appears that the R.C.Book of the vehicle stands in the name of one Kalidoss. From the endorsement in the R.C.Book, it is seen that Kalidoss had obtained finance from M/s.Sundaram Finance Ltd., for purchasing the car. Therefore, M/s.Sundaram Finance Ltd., filed Crl.M.P.No.3053 of 2017 under Section 451 Cr.P.C. before the learned Judicial Magistrate, Vendasandur for custody and sale of the car on the ground that Kalidoss had not paid the dues.

6. On notice, Kalidoss appeared before the learned Judicial Magistrate, Vendasandur and stated that he has no objection in the car being handed over to M/s.Sundaram Finance Ltd. Therefore, the learned Judicial Magistrate, Vendasandur passed final orders in Crl.M.P.No.3053 of 2017 on 08.08.2017 directing the return of the car to M/s.Sundaram Finance Ltd., on 7 conditions. Challenging conditions No.2,4,5,6 and 7, M/s.Sundaram Finance Ltd., has filed the present Criminal Revision Case. Condition Nos.2,4,5,6 and 7 read as under:

"Condition No.2: The petitioner shall execute a bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for a likesum.

Condition No.4: The petitioner shall not change the colour of the car or sell the car.

Condition No.5: The petitioner shall hand over the car to the trial Court at the time of disposal of the case.

Condition No.6: The petitioner shall produce the car on the first working day of every month before the learned Judicial Magistrate, Vendasandur.

Condition No.7: The petitioner shall produce the original R.C.Book in the Court."

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the first respondent. No notice was served on the second respondent / Kalidoss, since he has stated before the trial Court that he has no objection in the car being handed over to the petitioner.

8. At the outset, the police should not have sent the FIR and the case papers to the learned Judicial Magistrate, Vendasandur, in view of Section 14 of the act, which came into effect from 26.01.2016.



9. In this regard, a Division Bench of this Court in Re- The Registrar (Judicial) High Court, Madras 600 104 reported in 2017 (1) LW (Cr1) 813 has held that the Special Court constituted under Section 14 of the SC/ST Act has the original jurisdiction to deal with all matters arising under the SC/ST Act from the time of registration of FIR including remand. Of course, the police have got the power to produce the accused before the nearest Magistrate in the absence of the Special Court, near the place, where the accused is arrested, yet, subsequent remand has to be made only before the Special Court.

10. The second proviso to Section 14 (1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment, 2014, states as follows:

"Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act."

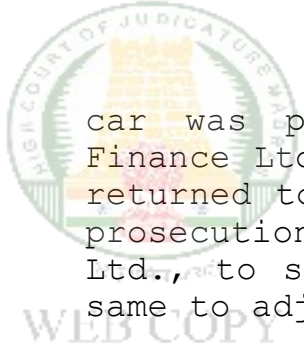
11. Though the above judgment has been circulated to all the Judicial officers in the State, strangely, the old procedure of sending the FIR to the Magistrate is still being followed. Therefore, the order dated 08.08.2017 passed by the learned Judicial Magistrate, Vendasandur in Cr1.M.P.No.3053 of 2017 is non-est in the eye of law and hence, the same is set aside.

12. What relief should be granted to the petitioner ?

13. Instead of sending the petitioner once again to the Special Court, this Court is of the view that the power of this Court under Section 482 Cr.P.C. can be invoked to do substantial justice to the parties.

14. In this case, the allegation is that the accused had gone in the said car to the house of the defacto complainant and had abused and assaulted him. Therefore, the car can be seemed to be a material piece of evidence to show that the accused had come in that car. Of course, the car cannot be treated like a weapon that has been used for the actual commission of a crime.

15. In the peculiar facts and circumstances of this case, it may not be necessary to mark the car as a material object before the trial Court. The defacto complainant in his complaint to the police has given the registration number of the car and therefore, he can adduce oral evidence to the effect that the accused had come in the said car to his residence on 23.08.2016 and abused and assaulted him. The investigating officer can give evidence to the effect that he had seized the car and had produced the same before the learned Judicial Magistrate, Vendasandur and, thereafter, on the orders of this Court, the car was handed over to M/s.Sundaram Finance Ltd.. The police can also record the statements of Kalidoss and include him as a prosecution witness to speak to the effect that the said



car was purchased by him under HP Agreement with M/s.Sundaram Finance Ltd., and that he had stated no objection for the car being returned to M/s.Sundaram Finance Ltd., for the arrears of dues. The prosecution can also examine an officer of M/s.Sundaram Finance Ltd., to show that they had taken custody of the car and sold the same to adjust the dues.

16. In such view of the matter, this Court directs the learned Judicial Magistrate, Vendasandur to return the car to the petitioner herein on condition that the petitioner shall execute a Panchanama (Muchalikka) on the following conditions that:

(a) M.S.Sundaram Finance Ltd., through its Authorised Officer shall execute a bond for Rs.20,000/- (Rupees Twenty Thousand only) without sureties.

(b) The police shall take photographs of the car in the presence of the Magistrate and submit the photographs in C.D. form and hard copy along with a certification under Section 65(B) of the Evidence Act.

(c) the petitioner will be entitled to dispose the car in accordance with the Hire Purchase Agreement with Kalidoss.

17. After the formalities are completed, the learned Judicial Magistrate, Vendasandur is directed to transfer the entire case files regarding Crime No.363 of 2016 to the Special Court for SC/ST Cases at Dindigul for further proceedings.

18. With the above directions, this Criminal Revision is allowed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

- 1.State of Tamil Nadu,
The Inspector of Police,
Vendasandur Police Station,
Vendasandur.
- 2.The learned District Munsif cum Judicial Magistrate,
Vendasandur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.S.Pon Senthil Kumaran, Advocate SR.No. 41775

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