



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

WEB COPY

CRL.R.C.No.1375 of 2012

M/s.Kotak Mahindra Prime Limited
Rep. by its Authorised Signatory
P.Balaji
Ceebros Arcade, I Floor
No.45, Montieth Road
Egmore, Chennai

.. Petitioner/Petitioner

Vs

1.The State
Rep. by the Inspector of Police
R-4, Traffic Investigation
Pondy Bazar Police Station
Chennai

2.M.P.Devika

.. Respondents/Respondents

Criminal revision preferred under Section 397 read with 401 Cr.P.C. to set aside the order dated 02.07.2012 passed by the IV Metropolitan Magistrate, Saidapet, Chennai in M.P.No.850 of 2012 in C.C.No.6545 of 2010.

For Petitioner : Mr.Abdul Hameed
For 1st Respondent : Mrs.P.Kritika Kamal,
Govt. Advocate (Crl. Side)

O R D E R

This Criminal Revision has been preferred challenging the order dated 02.07.2012 passed by the IV Metropolitan Magistrate, Saidapet, Chennai in M.P.No.850 of 2012 in C.C.No.6545 of 2010.

2.The facts of the case are as follows :

2.1.Devika, the 2nd respondent herein, purchased a Maruti Alto LXI car bearing registration No.TN 09 AE 9724 under hire purchase agreement with the petitioner and a sum of Rs.1,64,555/- was disbursed as loan by the petitioner to Devika. This loan was sanctioned on 30.09.2008. As on 14.10.2010, Devika was due a sum of Rs.1,46,160/- to the petitioner.

2.2.On 14.01.2010, Devika, who was on the wheels of the car, is said to have dashed against one Kumaran near T.Nagar area and in that accident, the said Kumaran lost his life on



15.01.2010.

2.3. In this regard, on the complaint of one Kaja Mohammed, an eyewitness, the police registered a case in Crime No.27/TN1/2010 under Sections 273 and 337 IPC and after the death of Kumaran, the case was altered to one under Section 304-A IPC. Thereafter, the car was seized by the police and was subjected to inspection by the Motor Vehicles Inspector.

2.4. It is alleged that Devika absconded after the incident and her whereabouts are not known till date. In such circumstances, the petitioner filed Crl.M.P.No.4259 of 2010 before the IV Metropolitan Magistrate, Saidapet, Chennai, under Section 451 read with Section 457 Cr.P.C. for interim custody of the car on the ground that, they have given finance for the car and that, Devika has defaulted in repayment. The learned Magistrate, by order dated 05.01.2011, granted interim custody of the car to the petitioner, on condition that the petitioner should not alienate the car.

2.5. The petitioner took custody of the car and initiated arbitration proceedings against Devika under the hire purchase agreement, for recovery of the amount due from her. It appears that Devika did not participate in the arbitration proceedings and an ex parte award has been passed on 26.12.2010.

2.6. In the meantime, the police completed the investigation and filed a final report in C.C.No.6545 of 2010 before the IV Metropolitan Magistrate, Saidapet, Chennai for the offence under Section 304-A IPC against Devika. Devika has been shown as "absconding accused" in the final report. From 2010 to 2019, the police has not been able to secure Devika on account of which, the case is idling in the trial Court without any progress.

2.7. While so, the petitioner filed an application in M.P.No.850 of 2012 in C.C.No.6545 of 2010, for permission to dispose of the car, which has been dismissed by the IV Metropolitan Magistrate, Saidapet, Chennai on 02.07.2012, aggrieved by which, the petitioner is before this Court.

3. Heard Mr.Abdul Hameed, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent State.

4. Today, Mr.V.Murugesan, Sub Inspector of Police, R-4 Pondy Bazaar Traffic Investigation Wing, T.Nagar, Chennai-17 and Mr.B.Kumar, HC 17165, R-4 Traffic Investigation Wing, T.Nagar,



Chennai-17 are present before this Court.

5. On instructions, learned Government Advocate (Crl. Side) submitted that the police have not been able to secure Devika till date and her whereabouts are not known.

6. Per contra, Mr. Abdul Hameed submitted that the financier cannot afford to keep the car indefinitely till Devika is secured by the police and that, permission should be given to the petitioner to sell the car.

7. There appears to be sufficient force in the submission of Mr. Abdul Hameed. Normally, the vehicle will be returned to the driver and it is not marked as a material object in the trial. The eyewitness statement and the Motor Vehicles Inspector's report would be sufficient to establish the fact that the vehicle in question was involved in the accident. Being an absconder this long, Devika cannot claim any privilege under the law as held by the Supreme Court in *Niranjan Singh vs. Prabhakar Rajaram* (AIR 1980 SC 785).

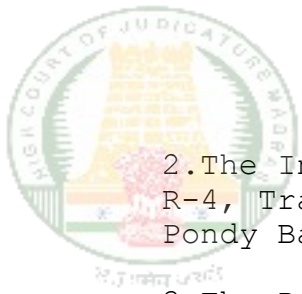
In the result, this criminal revision is allowed and the order dated 02.07.2012 passed by the IV Metropolitan Magistrate, Saidapet, Chennai in M.P.No.850 of 2012 in C.C.No.6545 of 2010 is set aside and the petitioner is permitted to dispose the car. It is open to Devika, as and when she appears to make a civil claim against the petitioner, if she is aggrieved and if the same is not barred by limitation. This Court cannot set at rest the issue with the above order. The fact that the police have not been able to secure Devika for the last 10 years, is a slur on the State police. Therefore, this Court directs the Deputy Commissioner of Police, Traffic (South), St. Thomas Mount, Chennai-16 to be present before this Court on 28.11.2019.

Call on 28.11.2019.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

To
1. The IV Metropolitan Magistrate Court
Saidapet, Chennai



2.The Inspector of Police
R-4, Traffic Investigation
Pondy Bazar Police Station, Chennai

3.The Deputy Commissioner of Police
Traffic (South), St. Thomas Mount
Chennai-16

4.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.Anand Abdul & Vinoth Advocate sr98170

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