

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.200 of 2016

M/s.Sundaram Finance Limited,
represented by its Assistant Manager(Legal) Mr.R.Thothathri,
having registered office at No,21, Patullos Road,
Chennai- 600 002. ... Petitioner/Respondent

Vs.

1.State represented by:

The Inspector of Police,
E-1, Mylapore Police Station,
Chennai.

2.M.Sivakumar ... Respondent/complainant

PRAYER: The Criminal Revision Petition has been filed, under Section 397 read with 401 Cr.P.C to set aside the order passed in Crl.M.P.No.3255 of 2019, dated 12.10.2015, by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and direct the first respondent to return the vehicle TATA SUMO GOLD- EX Car, No. AT446248D9J19720 and Engine No. 30CR401JWY646528 to the petitioner and order for sale of the vehicle as this Court may deem it fit.

For Petitioner : Mr.S.Shankar

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : No appearance

ORDER

This revision has been filed seeking to set aside the order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, in Crl.M.P.No. 3255 of 2015, dated 12.10.2015, dismissing the petition filed under Section 451 of Cr.P.C. for return of vehicle.

2 The petitioner is the Finance Company, which extended the loan facility to the second respondent/accused for purchase of four wheeler viz., TATA SUMO GOLD - EX car, bearing chassis No.MAT446248D9J19720 and Engine NO. 30CR401JWY646528. The second respondent/accused had entered into a loan agreement to the petitioner/Company and an amount of Rs.6,40,797/- had been extended to the second respondent and the loan has to be repaid in 36 monthly installments and the said vehicle was hypothecated in favour of the petitioner/company as a security for loan amount, which is also recorded in the R.C. Book.

3 The Second respondent had defaulted in paying monthly installments and as per the agreement, the petitioner/Company tried to take the possession of the vehicle, While, the petitioner/Company were attempting to take possession of the vehicle, they learnt that the vehicle was seized by the first respondent police in Crime No. 164 of 2015, registered for the offences under Sections 392, 336, 427, 506(2) of IPC, arraying the second respondent as an accused. The petitioner had filed Crl.M.P.No.3255 of 2015 for return of vehicle and notice was ordered to the respondent. The second respondent did not chose to appear before the Trial Court and the Trial Court had dismissed the petition stating that petitioner has sought for return of the vehicle and that if the vehicle is returned to the accused, it will not be produced before the Trial Court during the time of trial and that the petitioner/accused will use the said vehicle for commission of other offences and that there is a chance of disposal of the vehicle. As against the same, the present revision has been filed.

4 The learned counsel for the petitioner would submit that the learned Magistrate has not applied his mind and has not properly perused the petition filed by the petitioner/Company and had failed to appreciate the contention therein. The learned Trial Judge on wrong presumption has passed an order as if the accused had sought for return of vehicle and that if the vehicle is returned to the accused/second respondent, there is a possibility that it may not be produced during the Trial for marking it and that there is also a chance that vehicle will be disposed of by the second Respondent/accused. He would submit that the petitioner has rendered financial assistance to the accused. The petitioner as a Public Limited Company and that the vehicle which is now kept in the police station is losing its value and the value is also getting diminished day by day. He would submit that the petitioner is a reputed finance company and that the petitioners are prepared to give sufficient undertaking that the vehicle will not be disposed of and that it will be produced before the Court during the time of Trial.

Thereby, he would seek for setting aside the order of dismissal and direction to the Magistrate to return the vehicle to the petitioner.

5 The first respondent has filed a counter stating that the vehicle had been recovered from the second respondent/accused and that the second respondent/accused is habitual offender and that there are seventeen cases pending against him and that the Trial Court had held that the vehicle has not been seized from the petitioner/Company. Thereby, the Trial Court has rightly dismissed the petition.

6 Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor and perused the materials placed on record.

7 On a perusal of records, it is seen that the Trial Court has proceeded on the impression that the petition for return of property has been filed by the second respondent/accused. Whereas, the petition for return of vehicle has been filed by the petitioner, which is a finance Company, which had rendered financial assistance to the second respondent/accused. It is seen that the vehicle has been seized during the year 2015 and it is now in the custody of the respondent and till date, the final report has not been filed. Further, it is seen that notice was ordered and was served on the second respondent. Affidavit of service has been filed and the name of the second respondent is also printed in the list. But, there is no representation for the second respondent. This Court is of the opinion that no prejudice will be caused to the respondent if the interim custody of the vehicle is granted to the petitioner subject to the conditions:-

8 Accordingly, this criminal revision case stands allowed and the order passed in CrI.M.P.No.3255 of 2019, dated 12.10.2015, by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is hereby set aside and that the interim custody of the vehicle TATA SUMO GOLD- EX Car, No. AT446248D9J19720 and Engine No. 30CR401JWY646528 is herein ordered to be returned to the petitioner, subject to the following conditions:

- a. The petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees One lakh Only) to the satisfaction of the learned Magistrate, with two sureties.
- b. The petitioner shall produce the RC Book of the vehicle before the Trial Court and file an affidavit of undertaking that the petitioner company will not dispose or alter the physical features of the vehicle and that the vehicle will be produced before the Trial Court as and when required by the Trial Court for production during trial.

c. The RC book of the vehicle shall be retained by the Trial Court till the disposal of the trial or until further orders.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

dua
To

1.The Inspector of Police,
E-1, Mylapore Police Station,
Chennai.

2.XVIII Metropolitan Magistrate,
Saidapet, Chennai

3.The Public Prosecutor,
High Court, Madras.

CC:The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.S.Shankar, Advocate SR.94359

Crl.R.C.No.200 of 2016

SS(CO)
CB(10/01/2020)



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