



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.5106 of 2015
and
Crl.M.P.No.1 of 2015

M/s.Kotak Mahindra Prime Ltd.,
Rep. by its Authorized Signatory,
Mr.D.Vijay,
Plot No.12, S.No.98, Bharathi Street,
Near A.N.S. Jewellery, Alagapuram,
Salem-636 004.

... Petitioner

Versus

1.The State by Inspector of Police,
District Crime Branch,
Dharmapuri.
2.Udhayachandran
3.Jayachandran.G
4.Jayashree
5.Parimala
6.Jayarajan
7.Solai

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 20.10.2014 made in C.R.P.No.5 of 2012 on the file of the District and Sessions Judge, Dharmapuri by confriming the order dated 27.04.2012 made in C.M.P.No.2146 of 2012 in Crime No.09 of 2012 on the file of the Judicial Magistrate, Palacode and set aside the same and consequently direct the 1st respondent to handover the custody of the vehicle to the petitioner.

For Petitioner : Mr.A.Abdul Hameed for
M/s.AAV Partners

For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor

For R2 : No Appearance



ORDER

The petitioner M/s.Kotak Mahindra Prime Limited filed this petition against the dismissal order of the learned Principal District and Sessions Judge, Dharmapuri dated 20.10.2014 made in C.R.P.No.5 of 2012 by confirming the order dated 27.04.2012 made in C.M.P.No.2146 of 2012 in Crime No.09 of 2012 passed by the learned Judicial Magistrate, Palacode.

2.The learned counsel for the petitioner submitted that the petitioner is a Non Banking Financial Institution carrying on the business of Finance Motor Vehicle. During the course of the business, the 2nd accused/3rd respondent Jayachandran in Crime No.9 of 2012 pending on the file of the 1st respondent, had approached the petitioner seeking financial facility for purchasing vehicle viz., Volkswagon VK-JETA HIGHLINE. Thereafter, the said Jayachandran/2nd accused/3rd respondent had entered into a loan agreement bearing No.7302049, dated 26.09.2011 in temporary registration number TN 38 BKT 012, for which the petitioner had advanced a sum of Rs.16,30,000/- (Rupees sixteen lakhs thirty thousand only), which have to be repaid by him in 36 equated monthly instalments each Rs.54,530/- commencing from 01.11.2011 to 01.09.2014.

3.In violation of the terms of agreement, the 2nd accused failed to produce the said vehicle before the concerned Regional Transport Officer for registration and defaulted in making payment towards instalments due and paid only four instalments. In the meanwhile, the petitioner came to know that the vehicle was seized by the 1st respondent and produced before the learned Judicial Magistrate, Palacode. Thereafter, the petitioner filed a petition for seeking return of the vehicle in C.M.P.No.2146 of 2012, which was dismissed, against which he preferred a revision before the learned Principal District and Sessions Judge, Dharmapuri in C.R.P.No.5 of 2012 seeking for setting aside the order dated 27.04.2012 passed by the learned Judicial Magistrate, Palacode. However, the learned Principal District and Sessions Judge, Dharmapuri was pleased to dismiss the said revision.

4.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the vehicle bearing registration number TN 38 BKT 012 is a case property, which was seized from the possession of the 2nd accused in Crime No.9 of 2012. The 2nd accused had purchased the said vehicle by cheating several persons of money and hence, it is a case property. It is admitted by the learned counsel for the petitioner that only four instalments (EMI) have been paid. The vehicle invoice



agreement schedule and policy Xerox have been produced. The endorsement with regard to hire purchase have not been made in the Registration Certificate, which gives the right to repossess the vehicle and it is an important factor to be considered in a case of return of property. In this case, no such endorsement is made, of 36 months EMI only four months instalment have been paid. Further, it was admitted by the 2nd accused that the car purchased by the amount collected from various persons, who have been cheated. Hence, the car has become a case property, which was seized by the respondent and kept in the custody of the concerned Court and he objected for return of the vehicle.

5. On considering rival submissions made on either side, it is seen that the vehicle TN 38 BKT 012 has been seized from the 2nd accused/3rd respondent. Further, only four instalments have been paid out of thirty six. The petitioner also initiated arbitration proceedings against the owner of the car Jayachandran / 2nd accused and obtained an order in his favour as early as on 06.09.2012. The petitioner's interest has been safeguarded on the order of the arbitration, the petitioner has to execute the arbitral award to recover the money. Since the car is a case property and there is no hire purchase endorsement in the registration certificate, this Court is not inclined to issue a direction for return of vehicle TN 38 BKT 012, seized by the 1st respondent in respect of Crime No.9 of 2012.

6. The investigation in Crime No.9 of 2012 is completed and charge sheet filed and the same was taken on file as C.C.No.315 of 2016 by the learned Judicial Magistrate No.IV, Dharmapuri for the offence under Section 420, 409, 506(ii) of IPC and Money Circulation Scheme (Banning) Act, 1978. In view of the above, this petition cannot be entertained and the same is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District and Sessions Judge,
Dharmapuri.

2. The Judicial Magistrate,
Palacode.



3.The Judicial Magistrate No.IV,
Dharmapuri.

4.The Inspector of Police,
District Crime Branch,
Dharmapuri.

5.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.AAV Partners, Advocate Sr.22534

CRL.O.P.No.5106 of 2015

kj[col]
srg 09/07/2020