

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.760 of 2020

M/s.Volswagen Finance Private Limited,
Rep. by its Authorised Signatory,
Mr.B.Jeevakumar,
having office at
No.3, A wing, Silver Utopia,
Cardinal Gracious Road,
Chakala, Andheri (East),
Mumbai-400 099

... Petitioner/Third Party

Vs.

1. The Deputy Commissioner of Police,
Central Crime Branch-CCB,
Chennai.

2. Mr.R.Irfan

... Respondents/Complainant/
1st Accused

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 05.03.2020 passed in Crl.M.P.No.147/2020 in C.C.No.7654/2019 on the file of CCB and CBCID Metropolitan Magistrate Court at Egmore, Chennai and to direct the first respondent to release the vehicle AUDI TQ7 45 TDI QUATTRO BSIV bearing Registration No.TN 05 BP 0555 hypothecated to the petitioner finance company in favour of the petitioner company and permit to sell the vehicle.

For Petitioner :Mr.M.Arunachalam

For Respondents:Mr.M.Govindaraju (R2)
Mr.K.Madhan (R1)
Government Advocate

O R D E R

This Criminal case has been filed challenging the order dated 05.03.2020 passed in Crl.M.P.No.147/2020 in C.C.No.7654/2019 on the file of CCB and CBCID Metropolitan Magistrate Court at Egmore, Chennai and to direct the first respondent to release the vehicle AUDI TQ7 45 TDI QUATTRO BSIV bearing Registration No.TN 05 BP 0555 hypothecated to the petitioner finance company in favour of the petitioner company and permit to sell the vehicle.

2. The petitioner is the Finance Company engaged in the business of extending loan facility on hypothecation basis to the prospective customers. The second respondent availed financial service from the petitioner and purchased the AUDI TQ7 45 TDI QUATTRO BSIV vehicle. Thereafter, the said vehicle was utilised for illegal purpose. Therefore, the respondent police seized the vehicle, during investigation and after investigation, the respondent police registered a case for the offences punishable under Sections 120B, 379, 420, 465, 467, 468, 471 of I.P.C. and Sections 66, 66B, 66C & 66D r/w 84D, 84C of Information Technology Act, 2000 r/w Section 34 IPC in Crime No.215 of 2019 and charge sheet was also laid before the learned CCB & CBCID Metropolitan Magistrate, Egmore, Chennai. The court also taken the case on file in C.C.No.7654 of 2019. When the case was in the stage of summoning the accused, it was found that some of the accused have been absconding and during the pendency of the case, both the owner of the vehicle and the financier had filed petitions in CrI.M.P.Nos. 147/2020 and 5010/2010 in C.C.Nos. 7654/2019 under Section 451 Cr.P.C. before the CCB & CBCID Metropolitan Magistrate, Egmore, Chennai for interim custody of the vehicle. The learned Magistrate dismissed both the petitions vide order dated 05.03.2020 and challenging the said order, now the financier is before this Court by way of this revision.

3. The learned counsel for the Financier would submit that since he is the financier, he is entitled to get interim custody of the vehicle as per the Judgment of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2003 (1) CTC 175 wherein the Hon'ble Supreme Court has ordered that upon production of certified copy of the order, fix a date for production of the vehicle before it and upon production the lower Court shall cause photographs of the vehicle to be taken and record Panchnama thereof and the financier/owner shall be at liberty to effect sale of the vehicle. The said Judgment was followed by this Court in the case of Sundaram Finance Limited Vs. The State of Tamil Nadu reported in CDJ 2010 MHC 4315 and granted relief to the financiers in various cases for interim custody and therefore the same may be adopted in the present case also.

4. Heard both sides. Perused the material available on record.

5. Admittedly, the vehicle alleged to have involved in a crime and a case was registered by the respondent police for the aforesaid offences and they have also laid charge sheet before the learned CBCID Metropolitan Magistrate and the learned Magistrate also taken the case on file in C.C.No.. 7654 of 2019. During the pendency of the case, both the petitioner and also the owner of the vehicle approached the Court by filing petitions seeking for interim custody, which

were dismissed and now the financier is before this Court by way of present revision. The learned counsel for the petitioner would submit that as per the directions of the Hon'ble Supreme Court in the decision relied supra, the present revision may be considered.

6. I have gone through the entire papers and a careful perusal of the records would go to show that both the owner and financier filed a petitions under Section 451 of Cr.P.C. and the same were dismissed. Though the owner has not challenged the order, the financier has approached this Court by way of this revision. The main reason stated is that the second respondent has committed default in payment of the installments and therefore the petitioner company has every right to take possession of the vehicle and by all means the petitioner company is the hypothecated owner of the said vehicle till the entire dues were paid by the second respondent and further the trial may require a long time to conclude and by the time vehicle would be fully damaged and its value would be diminished. Therefore, either the financier or the owner would be the beneficiary. One thing is clear, the petitioner as a third party filed the petition and the same is dismissed and challenged the said order by way of this revision but the finance Company has not filed any affidavit to the effect that he will keep the vehicle in better position and got adequate infrastructure to have the custody of the vehicle. Though the learned counsel for the petitioner would submit that the petitioner got arbitration award and the said award is nothing to do with the present petition. Therefore, under these circumstances this Court does not satisfy with the reasons stated by the petitioner and is not inclined to interfere with the order passed by the learned Magistrate as there is no merit in this criminal revision and the same is liable to be dismissed and accordingly this criminal revision is dismissed. The respondent police is directed to secure the absconding accused as early as possible without further delay and produce them before the learned Magistrate the learned Magistrate is directed to expedite the trial and pass orders on merits and in accordance with law as expeditiously as possible. In case the police had no opportunity to produce the accused, the trial Court after obtaining the procedure contemplated under Criminal Procedure Code can take steps to split up the case and proceed further in accordance with law.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The CCB and
CBCID Metropolitan Magistrate Court
at Egmore, Chennai.

2.-do thro The Chief Metropolitan
Magistrate, Egmore, Chennai.

3.The Deputy Commissioner of Police,
Central Crime Branch(CCB)
Chennai.

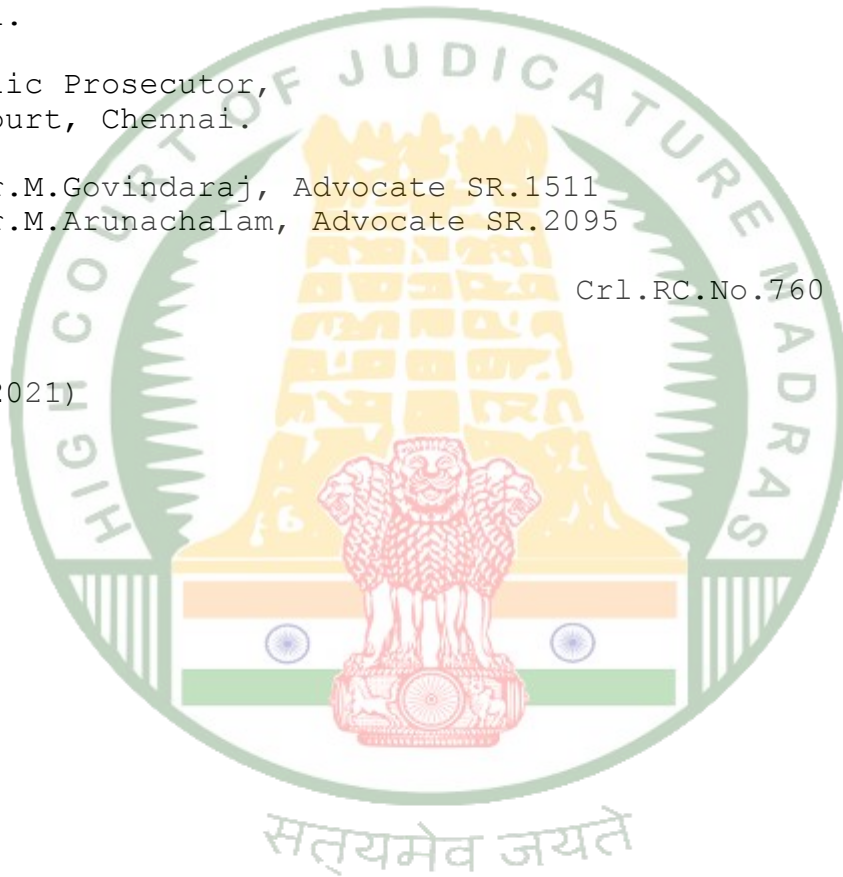
4.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.M.Govindaraj, Advocate SR.1511

+lcc to Mr.M.Arunachalam, Advocate SR.2095

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NMI (CO)
CB(18/02/2021)



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