



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **15.03.2021**

CORAM:

THE HONOURABLE **Mrs.JUSTICE R.HEMALATHA**

Crl.O.P.(MD)No.844 of 2021

WEB COPY

Murugan

...Petitioner

/Vs./

1.The State of Tamilnadu represented through
The Superintendent of Police,
Tirunelveli District, Tirunelveli.

2.The Inspector of Police,
Muneerpallam Police Station,
Muneerpallam,
Tirunelveli District.

...Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to direct the first respondent to monitor the investigation of the second respondent in CSR No.871 of 2020, dated 13.11.2020.

For Petitioner : Mr.P.M.Vishnuvarthanan

For Respondents : Mr.A.Robinson

Government Advocate (Criminal Side)

ORDER

This petition is filed seeking for a direction to the first respondent to monitor the investigation of the second respondent in CSR No.871 of 2020.

2.The contention of Mr.P.M.Vishnuvarthanan, learned counsel for the petitioner is that the petitioner availed a vehicle loan from M/s.Shriram Transport Finance Company Limited on 07.01.2019, for purchase of a four wheeler Toyota Innova Crysta bearing Registration No.TN-72-BW-8888 and the petitioner paid six installments and thereafter, did not pay any amount due to the financier. Since there was a dispute between the petitioner and the financier, regarding the balance amount, the petitioner filed a writ petition in W.P.(MD)No.16821 of 2019 before this Court and the same is still pending. In the meanwhile, the financier seized the vehicle illegally from the custody of the petitioner and though a complaint was lodged by the petitioner with the second respondent, the second respondent did not take any action against the financier.



3.It is a settled law that recovery of possession of the vehicle by a financier/owner, as per the terms of the Hire Purchase Agreement, does not amount to any criminal offence. In a contract of Hire Purchase Agreement, element of bailment and element of sale are involved in the sense that it contemplates an eventual sale. The rights of the parties have to be determined on the basis of the agreement. In the case on hand, the petitioner, admittedly, did not pay the instalments due to the financier.

4.In the decision of Hon'ble Supreme Court in **K.A.Mathai alias Babu and another vs. Kara Bibbikutty and another** reported in **1996 7 SCC 212**, it has been held that if a default is committed in making payment of instalments, the financier had a right to resume possession, even if the Hire Purchase Agreement does not contain a clause of resumption of possession for the reason that such a condition is to be read in the agreement. In such an eventuality, it cannot be held that the financier had committed an offence of theft and that too, with the requisite *mens rea* and requisite dishonest intention. The assertion of rights and obligations accruing to the parties under the Hire Purchase Agreement wipes out any dishonest pretence in that regard, from which it cannot be inferred that the financier had resumed the possession of the vehicle with a guilty intention.

5.In the circumstances, since there is no offence committed by the financier, the respondent police is right in not initiating action against the financier/Shriram Transport Finance Company Limited and the second respondent/Inspector of Police, Muneerpallam Police Station, Tirunelveli, is also directed to close the complaint in CSR No.871 of 2020. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to
: COVID-19 pandemic, a web copy of the order
may be utilized for official purposes,
but, ensuring that the copy of the order
that is presented is the correct copy,
shall be the responsibility of the
advocate/litigant concerned.



To

1.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

2.The Inspector of Police,
Muneerpallam Police Station,
Muneerpallam,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.P.M.VISHNUVARTHANAN, Advocate (SR-11357[F] dated
16/03/2021)

Order made in
Crl.O.P.(MD)No.844 of 2021
Dated: 15.03.2021

SSS(CO)
TR(15.04.2021) 3P 5C