



BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

DATED : 07.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.591 of 2020

M/s.Sundaram Finance Limited,
Represented by its Senior Branch Manager,
M.V.Desikan ... Petitioner/Petitioner

Vs.

1.State,
Represented by,
The Inspector of Police,
Thirukattupalli Police Station,
Thirukattupalli,
Thanjavur District.
(Crime No.309 of 2017).

2.P.Vijay ... Respondents/Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in Cfr.No.5725 of 2020 in unfiled Cr.M.P... of 2020 on the file of the Special Court under the Mines and Minerals (D & R) Act, 1957, Thanjavur (In the Court of the learned Principal Sessions Judge, Thanjavur) and set aside the order dated 24.08.2020 and permit the petitioner herein to take custody of the sale of the vehicle bearing Registration No.TN-57-AA-6699, Chasis No.MBIKADYC3AEPD2370 and Engine No.PAE127374Z.

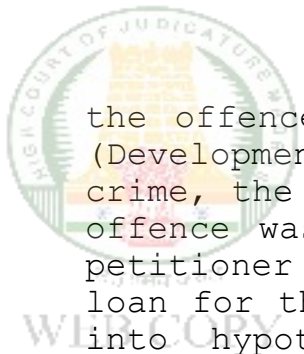
For Petitioner
For R - 1

: Mr.S.Ponsenthilkumaran
: Ms.M.Aasha
Government Advocate (Crl. Side)

ORDER

This revision has been filed to set aside the order passed in Cfr.No.5725 of 2020 in unfiled Cr.M.P... of 2020 on the file of the Special Court under the Mines and Minerals (D & R) Act, 1957, Thanjavur (In the Court of the learned Principal Sessions Judge, Thanjavur), dated 24.08.2020 and permit the petitioner herein to take custody of the sale of the vehicle bearing Registration No.TN-57-AA-6699, Chasis No.MBIKADYC3AEPD2370 and Engine No.PAE127374Z, thereby dismissed the petition for return of the vehicle filed under Sections 451 and 457 of Cr.P.C.

2.The case of the prosecution is that the second respondent herein owned Multi Axle Goods Vehicle bearing Registration No.TN-57-AA-6699. He involved in crime registered in Crime No.309 of 017 for



the offence under Section 379 r/w 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. In pursuant to the said crime, the petitioner was arrested and the vehicle used for the said offence was also seized and deposited before the Court below. The petitioner being the financier to the second respondent, arranged loan for the purchase of the said vehicle. Thereafter, they entered into hypothecation agreement and there is endorsement in the Registration Certificate and thereby created a charge over the said vehicle.

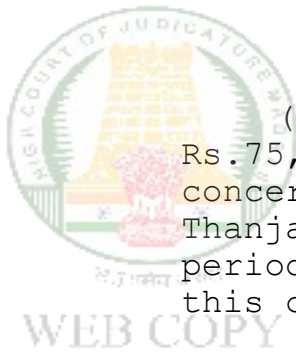
3.Now, the learned counsel appearing for the petitioner would submit that the second respondent also failed to make any installment due to the said vehicle. However, the Court below dismissed the petition for the reason that the petitioner is not the owner of the vehicle and he is only having hypothecation over the said vehicle. The petitioner being a Non-banking Finance Company cannot be considered as the owner of the vehicle. He may have right to proceed against the second respondent for the due of installment.

4.The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the said vehicle was seized on the allegation that the second respondent was found in possession of three units of river sand. Therefore, the case has been registered in Crime No.309 of 2017 for the offence under Section 379 r/w 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957. In pursuant to the said crime, the vehicle was seized and produced before the Court below. She further submitted that even till today, the first respondent did not complete the investigation and no charge-sheet has been laid.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the materials available on record.

6.On a perusal of the records revealed that now the vehicle is kept idle exposing to all vagaries of nature. Simply kept the vehicle idle would not serve any purpose. Admittedly, the petitioner being a financier having entered into hypothecation agreement and also endorsed the hypothecation agreement in the Registration Certificate. That apart, the second respondent also failed to pay any installment due to the petitioner herein.

7.Considering the above, the order passed in Cfr.No.5725 of 2020 in unfiled Cr.M.P... of 2020 on the file of the Special Court under the Mines and Minerals (D & R) Act, 1957, Thanjavur (In the Court of the learned Principal Sessions Judge, Thanjavur), dated 24.08.2020 is set aside and the Criminal Revision Case is allowed. The learned Principal Sessions Judge, Thanjavur is directed to return the vehicle, subject to the fulfillment of the following conditions by the petitioner:-



(i) Accordingly, the petitioner shall deposit a sum of Rs.75,000/- (Rupees Seventy Five Thousand Only) before the concerned District Mines and Minerals Foundation Trust, Thanjavur District as non-refundable deposit, within a period of four weeks from the date of receipt of a copy of this order.

(ii) The petitioner shall surrender the original Registration Certificate of the vehicle before the concerned Court.

(iii) the petitioner shall give an unconditional undertaking to the first respondent that he shall not alienate or encumber the vehicle in question without permission of the Jurisdictional Magistrate till the completion of the confiscation proceedings.

(iv) the petitioner shall not change the colour and scheme of the vehicle.

(v) the petitioner shall not use the vehicle for any illegal activities.

(vi) before releasing the vehicle, the police authority shall take photographs of the vehicle at the cost of the petitioner.

(vii) The petitioner shall produce all xerox copies of the documents pertaining to the ownership of the seized vehicle to the first respondent.

(viii) As and when the first respondent call for the vehicle for enquiry, the petitioner has to produce the vehicle in question and he shall cooperate with the enquiry to be conducted by the first respondent.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2022

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 Principal Sessions Judge,
Thanjavur.

2.The Inspector of Police,
Thirukattupalli Police Station,
Thirukattupalli,
Thanjavur District.

Copy to

1.The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

2.The Officer/Incharge,
District Mines and minerals Foundation Trust,
Thanjavur District.

+1 CC to M/s.S. PONSENTHILKUMARAN, Advocate (SR-17643[F] dated
08/04/2022)

Crl.R.C (MD) No.591 of 2020
07.04.2022

SP (CO)
KB (25.04.2022) 4P 6C