



CrI.R.C.(MD).No.447 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.08.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Dugar Finance and Investment Ltd.,
(Registered with in Reserve Bank of India)
Rep by its Manager Radha Krishnan,
S/o.N.S.Sadagoppachariyar,
Tirunelveli District.

... Petitioner

Vs.

1.The State rep by
The Inspector of Police,
DCB PS. Tirunelveli,
Crime No.34 of 2019

2.The Inspector of Police,
DCB Police Station,
Tenkasi.

3.S.Priya

... Respondents

PRAYER: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records from the learned Judicial Magistrate No.I, Tirunelveli in CrI.M.P.No.6385 of 2022 dated 26.05.2022 and set aside the same.



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For Petitioners : Mr.S.M.Mohan Gandhi

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor for R1 & R2

: Mr.C.Venkatesh for R3

ORDER

This Criminal Revision Case has been filed against the impugned order passed by the learned Judicial Magistrate No.I, Tirunelveli, in CrI.M.P.No.6385 of 2022, dated 26.05.2022.

2. The case of the prosecution is that the third respondent herein is the owner of the vehicle bearing Reg No.TN-55-BA-1515. The petitioner purchased the said vehicle under the hire purchase agreement through the petitioner's finance company. She is said to have committed offence under Sections 406, 420 r/w 120(b) of IPC. The defacto complainant alleged that the third respondent and other accused cheated the defacto complainant from January 2019 to March 2019 to the tune of Rs.1,24,30,070/-(Rupees One Crore Twenty Four Lakhs Thirty Thousand and Seventy only). According to the defacto complainant, the accused, namely, the third



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respondent and others after obtaining the paddy and they refused to give the amount. When the defacto complainant demanded the amount, the third respondent and other accused criminally intimidated the defacto complainant. Therefore, the defacto complainant made a complaint against the third respondent and other accused. The first respondent police registered the case in crime No.34 of 2019, for the offences under Sections 406, 420 r/w 120(b) of IPC.

3. The third respondent filed the petition under Section 451 Cr.P.C., to seek the interim custody of the above said vehicle, in CrI.M.P.No. 3041 of 2020. The same was dismissed on 18.03.2020 by the learned trial Judge. Challenging the same, the third respondent filed the CrI.R.C. (MD).No.515 of 2020. This Court, by order, dated 25.09.2020 passed the following order :

In the above circumstances, this Criminal Revision Case is allowed and the order of the learned Judicial Magistrate No.I, Tirunelveli in Cr.M.P.No.3041 of 2020 is set aside and the learned Magistrate is directed to return the vehicle to the petitioner for interim



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custody subject to the confiscation proceedings on the following conditions:

(i)The petitioner shall deposit the original Registration Certificate of the vehicle with the learned Judicial Magistrate No.I, Tirunelveli ;

(ii)The petitioner shall deposit a sum of Rs. 1,00,000/- (Rupees One Lakh only) to the credit of Crime No.34 of 2019 on the file of the learned Judicial Magistrate No.I, Tirunelveli within a period of two weeks from the date of receipt of a copy of this order ; (iii)The petitioner is directed to execute a bond for a sum of Rs. 5,00,000/- (Rupees five lakhs only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Tirunelveli ;

(iv)The petitioner shall not alienate and shall not make any alteration in the vehicle ;

(v)The petitioner shall produce the vehicle before the Court and before the respondent as and when required and this order is subject to the final order to be passed in the confiscation proceedings ;



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4. Since the vehicle was under hire purchase agreement with the petitioner's company and for some other reason, the third respondent has not obtained the interim custody of the said vehicle.

5. At this stage, the petitioner being a financier, filed Crl.M.P.No. 6385 of 2022, to seek interim custody of the vehicle. The same was dismissed by the learned trial Judge by passing the following order:

*The petitioner submitted that he is a manager of Dugar Finance and investment Ltd. The third respondent S.Priya is accused in the crime No.34 of 2019. This third respondent/accused has hypothecate the vehicle bearing registration No.TN-55-BA-1515 Motor Car (Innova Crysta) 29V B5 IV to the petitioner company and availed a sum of Rs.15,50,000/- towards the purchase of the said vehicle under loan agreement No.10727. The said hynotheealin is still in force with the petitioner. The first respondent police has seized the said vehicle in connection with the crime No.34 of 2019. From the accused and remanded the said vehicle before this Court **on 23 of 2020** in P.R.No.19 of 2020. The third respondent accused ahs filed a petition before this Hon'ble Court dismissed said petition on 18.03.2020.*



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Aggrieved by the said dismissal order, the third respondent/accused preferred a revision case in Crl.R.C. (MD)No.515 of 2020, before this Court, without adding the petitioner as a party. It is pertinent to note that the said third respondent/accused supervise that hypothecation and dues has obtained as order from Hon'ble High Court dated 25.09.2020, in their favour. The Hon'ble High Court passed conditional order and directed to return the vehicle to the third respondent/accused. But the said vehicle not release since the third respondent accused that complied with the condition directed by the Hon'ble High Court. Hence this petition bearing financier for on the said innova Crysta Car bearing registration No.TN-55-BA-1515. Prays to release the same to the petitioner.

2. On perusal of Bundle and the petition, it is seen that this petition is filed under Section 451 of Cr.P.C., the return of Innova Crysta Car bearing registration No.TN-55-BA-1515 motor car. But as far on the said petition mentioned Innova Car is concerned already Hon'ble High Court's direction in Crl.R.C. (MD).No.515 of 2020 to hand over the said police maintained Car to the third respondent/accused herein. Hence, this petition is not maintainable before this



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Court. This petition is dismissed.

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Challenging the same, the petitioner herein approached this Court, by way of filing this Criminal Revision Case.

6. The learned counsel for the petitioner submitted that the third respondent availed the vehicle loan for a sum of Rs.15,50,000/- (Rupees Fifteen Lakhs and Fifty Thousand only) by entering hypothecation agreement as per the Motor Vehicles Act. She committed default in making the payment. As per the agreement, they are entitled to seize the vehicle and sell and appropriate the same towards the loan amount. The vehicle is in the custody of the respondent police without proper maintenance not only causing the damage to the vehicle and also value of the vehicle got diminished. In that event, the petitioner is unable to appropriate the amount. Hence, he seeks for interim custody.

7. Per contra, the learned Additional Public Prosecutor submitted that the said vehicle was purchased using the crime amount, and the due was also paid from the crime amount, and hence, the custody of vehicle should



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not be given to the petitioner's company. Since the vehicle was purchased from the crime amount, the petitioner is not entitled to the interim custody and dispose of the vehicle and appropriate the amount.

8.The learned counsel for the third respondent submitted that the vehicle was purchased under the hire purchase agreement and the original R.C.book is in the custody of the petitioner. She is unable to get the vehicle as per the order of this Court. He would further submit that in view of the pendency of the case, with allegation that the same was purchased using the crime amount, the petitioner's prayer has to be decided in accordance with law.

9. This Court considered the rival submissions and perused the records and the impugned order and also the precedents relied upon by the parties.

10. It is admitted that the third respondent entered into a hire purchase agreement with the petitioner to purchase the vehicle in question.



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The said vehicle was also seized by the second respondent police from the accused in Crime No.34 of 2019. Earlier, the third respondent filed a petition, under Section 451 of Cr.P.C., to get the interim custody of the vehicle. The same was not obtained due to the non-availability of original R.C.book.

11. Now, the question is that the financier, namely, the petitioner seeks the interim custody of the vehicle. To address the said issue, it is relevant to extract the following principle laid down by this Court reported in **2011 MLJ Crl 191** in the case of ***Sundaram Finance Ltd., Vs. State of Tamil Nadu***,

11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon'ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and



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credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon production, the lower court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.

12. Admittedly, in this case, the accused/third respondent entered into the hire purchase agreement with the petitioner's finance company. Earlier, he filed a petition under Section 451 of Cr.P.C., and this Court also ordered to release the vehicle with the condition to produce the original R.C.Book and also imposed a condition to execute a bond for a sum of



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Rs.5,00,000/- (Rupees Five Lakhs only) and directed him to deposit a sum of Rs.1,00,000/- (Rupees One Lakh only). The same was not complied with by the third respondent. Therefore, there was no dispute regarding the hire purchase agreement. Further, it is the case of the prosecution that the accused collected the paddy from the number of farmers and without paying the amount, cheated the farmers. For proving the said allegation, the presence of the vehicle is not necessary.

13. In the said circumstances, keeping the vehicle without using anybody and allowing the same to natural degradation will amount to the injustice. The financier is entitled to repossess the vehicle in the case of default in repayment. It the further case of the financier that the vehicle was purchased before the allegation of the cheating. Therefore, considering the overall circumstances, this Criminal Revision Case is allowed and the order of the learned Judicial Magistrate No.I, Tirunelveli, in Cr.M.P.No.6385 of 2022, dated 26.05.2022, is hereby set aside and the learned Judicial Magistrate No.I, Tirunelveli, is directed to release the vehicle to the petitioner on the following condition:



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(i) The learned Judicial Magistrate is hereby directed to entrust the possession of the vehicle to the petitioner upon taking the photograph of the vehicle and recording a panchanama in accordance with Rule 257 of the Criminal Rules of Practice, 2019 framed by this Court;

(ii) The petitioner shall then be at liberty to effect the sale of vehicle by following the procedure stated in the hire purchase agreement entered into with the third respondent; and

(iii) The petitioner shall file an undertaking affidavit to deposit the sale proceeds before the learned Judicial Magistrate No.I, Tirunelveli, in the event of conviction and the prosecution establishes the case that the petitioner purchased the vehicle from the out of the crime proceeds.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

sbm



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To
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- 1.The Judicial Magistrate No.I,
Tirunelveli.
- 2.The Inspector of Police,
DCB PS. Tirunelveli.
- 3.The Inspector of Police,
DCB Police Station,Tenkasi.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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