



Crl.R.C.(MD)No.760 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 20.03.2025

Pronounced on : 30.04.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.760 of 2024

and

Crl.M.P.(MD)No.8140 of 2024

The Manager, S.Karthik
SriRam Transport Finance Company Ltd.
Door No.103AC, Katcheri Road,
Virudhunagar-626001.

... Petitioner

Vs.

1.Kalidass

2.The Inspector of Police,
Villoor Police Station,
Villoor, Kallikudi Taluk,
Madurai District.

... Respondents

Prayer : This Criminal Revision Case filed under Sections 438 r/w 442 B.N.S.S., to call for the entire records pertaining to the order dated 23.07.2024 in Cr.M.P.No.2211 of 2024 by the learned District Munsif cum Judicial Magistrate at Peraiyur and set aside the order by allowing this revision.



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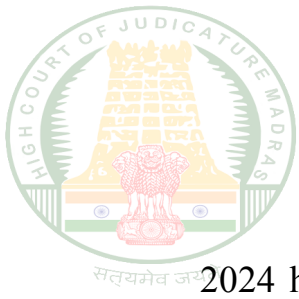
For Petitioner : Mr.M.Kannan
For R1 : No appearance
For R2 : Mr.B.Thanga Aravindh
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.2211 of 2024 dated 23.07.2024 on the file of the District Munsif cum Judicial Magistrate, Peraiyur, in granting interim custody of the vehicle to the first respondent.

2. It is not in dispute that the vehicle 424B2 Backhoe Loader (JCB) bearing Registration No.TN-67-BF-9583 was seized in connection with the case in Crime No.46 of 2022 on the file of the second respondent police for the offences under Section 379 IPC and Sections 4(1)(1A) and 21(1) of Mines and Minerals (Development and Regulation) Act, 1957.

3. It is evident from the records that the first respondent being the registered owner of the vehicle has filed a petition in Crl.M.P.No.2211 of 2024 before the jurisdictional Magistrate Court seeking interim custody of the vehicle. The first respondent in his petition in Crl.M.P.No.2211 of



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2024 has impleaded the present petitioner financier of the vehicle as the second respondent. It is further evident from the records that the learned Magistrate sent a notice to the petitioner to produce the original Registration Certificate in respect of the JCB vehicle bearing Registration No.TN-67-BF-9583 and also to offer their objections for returning the vehicle to the first respondent on interim custody, that the petitioner has entered into appearance and filed their objections and also filed a separate petition seeking interim custody of the vehicle and that the learned Magistrate, considering the objections raised by the petitioner as well as by the prosecution, has passed the impugned order dated 23.07.2024 in Crl.M.P.No.2211 of 2024 granting interim custody to the first respondent and returned the petition filed by the petitioner holding that the Court cannot enforce the hire-purchase agreement for re-possession of the vehicle and that the re-possession of the vehicle shall be enforced as per the agreement between the parties. Challenging the order granting interim custody to the first respondent, the present revision came to be filed.

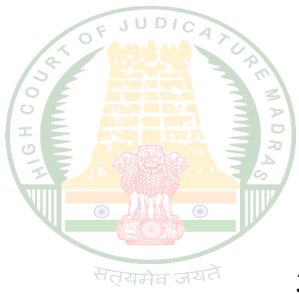
4. The case of the petitioner is that the first respondent approached the petitioner for a loan in respect of the vehicle bearing Registration



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No.TN-67-BF-9583 for total agreement value of Rs.31,70,081/- and entered into a loan-cum-hypothecation agreement dated 03.08.2018 agreeing to repay the same in 60 installments commencing from 05.09.2018 to 05.08.2023, that the Regional Transport Authority, Virudhunagar has made an endorsement in favour of the petitioner company in the Registration Certificate of the vehicle and as such, the petitioner has right over the vehicle, that since the first respondent had not paid the monthly installments as agreed, the petitioner company sent a legal notice on 03.09.2021, which was not replied, that the petitioner came to know about the registration of the sand theft case and seizure of the hypothecation vehicle by the second respondent police, that since the first respondent-borrower has violated the terms and conditions of the agreement entered into between the parties, the petitioner has right over the vehicle to take possession of the same, that since trial is in initial stage, it will take long time to complete the same, that if the vehicle is allowed to be in the custody of the police, gradually it will lose its value and will get it rusted when kept ideally in rain and sunlight and that therefore it has become just and necessary to hand over the vehicle to the petitioner company on interim custody.

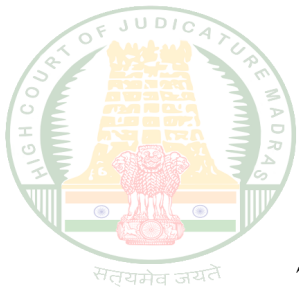


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5. The learned Magistrate, considering the contentions and objections raised by the petitioner, by holding that the Magistrate Court cannot enforce the hire-purchase agreement and the petitioner company has to work out their remedy before the appropriate forum and also taking note of the facts that confiscation proceedings has not been initiated and that if the vehicle is kept in open place exposing to sun and rain, the value of the vehicle will be deteriorated and no purpose will be served in keeping the vehicle in custody, has decided to grant interim custody to the first respondent.

6. The learned counsel appearing for the petitioner would rely on a decision of the Hon'ble Supreme Court in ***Magma Fincorp Limited Vs. Rajesh Kumar Tiwari*** reported in ***(2020) 10 SCC 399***, wherein, the order of National Consumer Disputes Redressal Commission came to be challenged and the Hon'ble Apex Court has held that the Financier continues to be the owner of the goods under a hire purchase agreement while the hirer pays for use of the goods and for the option to purchase them.

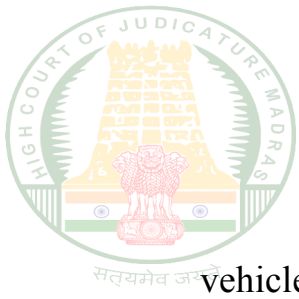


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7. As rightly contended by the learned Government Advocate (Criminal Side), neither Section 451 Cr.P.C. nor Section 457 Cr.P.C. speaks about the owner of the property. Section 451 Cr.P.C. deals with the custody and disposal of property produced before the criminal Court during an enquiry or trial and it empowers the Court to decide how the property should be kept safe and order its disposal. When any property is brought before the criminal Court, the Court has the authority to make an order for its proper custody ensuring the safe keeping of the property. Section 457 Cr.P.C. outlines the procedure for police officers when they seized the property and report it to the Court and when such property is not produced before the criminal Court during an enquiry or trial, the Magistrate has to make an order for disposal of such property or the delivery of such property to the person entitled to the possession thereto or if such person cannot be ascertained, order for the custody and production of such property.

8. It is necessary to refer the decision of the Hon'ble Supreme Court in *Manoj and another Vs. Shriram Transport Finance Company Limited and others* reported in *AIRONLINE 2002 SC 751*, wherein, the

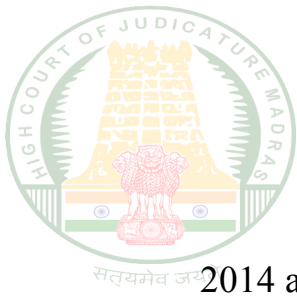


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vehicle seized stood registered in the name of the appellant and on his application, the Magistrate directed to release the vehicle temporarily in his favour by imposing some conditions, that when the said order was challenged before the High Court, taking note of the fact that civil suit was pending, the High Court has set aside the order of the Magistrate and that when the same was challenged before the Hon'ble Supreme Court, the Hon'ble Apex Court, by observing that since the learned Magistrate has categorically held that the order delivering possession of the property to the appellant is subject to any variation to be made by the civil Court and if the Financier was aggrieved by the order directing release of the vehicle in favour of the appellant, who continues to be the registered owner of the vehicle, it was open for the financier to approach the civil Court in the pending civil suit for interference, set aside the order of the High Court and restored the order passed by the learned Magistrate.

9. It is also necessary to refer the decision of this Court in ***Bharath Vs. State*** passed in ***M.P.(MD)No.1 of 2014 in Crl.R.C.(MD)No.258 of 2014 dated 21.07.2014***, wherein, financier of the vehicle moved an application to modify the conditions imposed in Crl.R.C.(MD)No.258 of



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2014 and the relevant passages are extracted hereunder:-

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“2.The learned Judicial Magistrate, Vilathikulam, simply shirked off his responsibility by dismissing both the petitions filed by the registered owner and the financier of the vehicle, without rendering a finding as to who between them is best suited to seek interim custody of the vehicle. The same was the reason why this Court, vide its order dated 24.05.2014, chose to allow the revision filed by the owner of the vehicle through his power agent and direct release of the vehicle subject to conditions. The petitioner in Crl.R.C(MD)No.266 of 2014 is only a financier and he has got only a charge over the vehicle by virtue of hypothecation endorsement made on the Registration Certificate of the vehicle. If at all there is any amount due to him, instead of resorting to take the vehicle through the Criminal Court in which it was produced, he ought to have followed the due process for recovery of the money due to him or for the physical possession and sale of the vehicle. Without doing it, the financier chose to approach the Criminal Court for getting custody of the vehicle on his coming to know that the registered owner was in trouble because of the seizure of the vehicle in a criminal case. Suppose the owner was not there in the picture and he had not made any claim, the financier could have approached the Criminal Court for the interim custody of the vehicle in



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order to protect the security given to the financier from getting deteriorated in its value.

3.The Hon'ble Apex Court has issued general and detailed guidelines to the Courts below in its decision in Sunderbhai Ambalal Desai v. State of Gujarat reported in 2003 SCC(Crl) 1943. In case of motor vehicles, the Apex Court has directed that in case the owner is not found or the vehicle has been abandoned, the financier or the insurer can be put on notice so as to enable them to seek interim custody of the vehicle, so that the vehicle can be saved from getting ruined due to exposure to sunlight and rain. Here is a case, in which the owner himself has approached the Court for interim custody of the vehicle. Therefore, there shall be no need for the Court to give notice either to the insurer or to the financier and based on the Registration Certificate, the learned Judicial Magistrate, Vilathikulam could have directed release of the vehicle in favour of the registered owner of the vehicle, subject to reasonable conditions. As it was not done by the learned Judicial Magistrate, Vilathikulam, this Court chose to do it by passing the order dated 24.05.2014. However, as rightly pointed out by the learned counsel for the petitioner in M.P(MD)No.1 of 2014 in Crl.R.C(MD)No. 258 of 2014, a mistake had crept in whereby the order came to be passed to the effect that the said petitioner gave an undertaking to deposit Rs.5,00,000/- (Rupees five lakhs



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only) for getting the release of the vehicle and on the other hand what was represented was that though there might have been a rival claim made by the financier, the registered owner of the vehicle was prepared to settle the dues to the financier. The same was misinterpreted and thus the said condition came to be imposed. After hearing both sides, this Court is convinced with the submission made by the learned counsel for the petitioner in M.P(MD)No.1 of 2014 in Crl.R.C(MD)No.258 of 2014 that the said condition was imposed mistakenly as if there was an undertaking, whereas it was only a representation that he was ready to pay whatever amount that might be due to the financier. Even then the payment due to the financier could not have been made a condition for the release of the vehicle, which was seized in a criminal case. When it is not a case of confiscation, wherein alone the persons suffering confiscation can pay the amount and get the vehicle released, it is only an entrustment of interim custody pending investigation and pending disposal of the criminal case. Hence, imposition of a condition for depositing an amount almost equivalent to the value of the vehicle may not be proper and that too when the observation that the petitioner undertook to deposit that amount is now established to be incorrect. The condition requiring deposit of Rs.5,00,000/- (Rupees five lakhs only) needs to be modified. Besides, modifying that condition, this Court



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is also inclined to impose the exact conditions on which the vehicle should be released, instead of leaving it to the discretion of the learned Judicial Magistrate, Vilathikulam to prescribe the other conditions.”

10. In the case on hand, admittedly, the Registration Certificate stands in the name of the first respondent but no doubt, there is an endorsement in favour of the petitioner company. Even according to the prosecution, before the seizure of the vehicle, the said vehicle was in the custody of the first respondent. It is not the case of the prosecution that they have initiated any confiscation proceedings in respect of the said vehicle.

11. As rightly observed by the learned Magistrate, if the vehicle is kept in open place exposing to sun and rain, the value of the vehicle will be deteriorated and no purpose will be served in keeping the vehicle in custody.

12. Considering the above facts and circumstances, the impugned order granting interim custody to the first respondent by the learned



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Magistrate cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

13. In the result, this Criminal Revision Case stands dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

30.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif cum Judicial Magistrate,
Peraiyur.
- 2.The Inspector of Police,
Villoor Police Station,
Villoor, Kallikudi Taluk,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.760 of 2024
and
Crl.M.P.(MD)No.8140 of 2024

Dated : 30.04.2025