

Bharath Vs. 1.State Through

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Court : Chennai

Decided On : Jul-21-2014

Judge : P.R.Shivakumar

Appellant : Bharath

Respondent : 1.State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 21.07.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR MISCELLANEOUS PETITION(MD)No.1 of 2014 in CRIMINAL REVISION CASE(MD)No.258 of 2014 and CRIMINAL REVISION CASE(MD)No.266 of 2014 M.P(MD)No.1 of 2014 in CrI.R.C(MD)No.258 of 2014: Bharath .Petitioner versus 1.State through The Sub Inspector of Police, Kulathur Police Station, Vilathikulam Taluk, Thoothukudi District.

2.Subramanian (Second respondent is impleaded as per order dated 21.07.2014 made in M.P(MD)No.2 of 2014).Respondents Petition filed under Section 482 Cr.P.C.praying to modify the conditions passed in CrI.R.C(MD)No.258 of 2014, dated 24.05.2014 on the file of this Court to execute the bond for any amount with sureties.

!For Petitioner : Mr.M.Saravanan For Respondent : Mrs.S.Prabha, No.1 Govt.

Advocate (CrI.

Side).For Respondent : Mr.A.K.Manickam No.2 CRIMINAL REVISION CASE(MD)No.266 of 2014: Subramani .Petitioner versus 1.State rep.

by The Inspector of Police, Kulathur Police Station, Tuticorin District.

(Crime No.3 of 2014).2.Nikzon (Second respondent is impleaded as per order dated 21.07.2014 made in M.P(MD)No.1 of 2014).Respondents Criminal Revision Case has been filed under Sections 397 read with 401 Cr.P.C.against the order dated 15.04.2014 passed in Crl.M.P.No.1073 of 2014 in Crime No.3 of 2014 on the file of the respondent police, by the learned Judicial Magistrate, Vilathikulam.

For Petitioner : Mr.A.K.Manickam For Respondent : Mrs.S.Prabha, No.1 Govt.

Advocate (Crl.

Side).For Respondent : Mr.M.Saravanan No.2 :COMMON

ORDER

The submissions made by Mr.A.K.Manickam, learned counsel for the revision petitioner in Crl.R.C(MD)No.266 of 2014 (financier of the vehicle) and by Mr.M.Saravanan, learned counsel for the petitioner in M.P(MD)No.1 of 2014 in Crl.R.C(MD)No.258 of 2014 (owner of the vehicle represented by power agent) are heard.

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 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 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 CrI.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 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.

Hence, paragraph No.5 of the order dated 24.05.2014, made in CrI.R.C(MD)No.258 of 2014, shall stand modified as follows: Interim custody of the

vehicle, namely lorry bearing Registration No.TN-46-H-5396, shall be given to the petitioner in CrI.R.C(MD)No.258 of 2014 on his executing a bond for a sum of Rs.3,00,000/- (Rupees three lakhs only) alongwith two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Vilathikulam subject to the following conditions: i)The Petitioners shall produce proof of ownership of the vehicle; ii) The petitioner in CrI.R.C(MD)No.258 of 2014 shall surrender the R.C.Book and the learned Judicial Magistrate, Vilathikulam, is at liberty to return the R.C.Book for renewal of the registration or for insuring the vehicle.

The R.C.Book can be obtained from the Court by filing a petition and after the accomplishment of the purpose, the same should be returned to the Court; and iii)The petitioner in CrI.R.C(MD)No.258 of 2014 shall also file an affidavit of undertaking to the effect that: a)He will not alienate the vehicle without obtaining an order from the learned Judicial Magistrate, Vilathikulam; b)He will produce the said vehicle before the Court as and when summoned to produce the same; and c)No major alteration, excepting the necessary repairs to make the vehicle road-worthy, shall be made.

4.In view of the discussion regarding M.P(MD)No.1 of 2014 in CrI.R.C(MD)No.258 of 2014, the revision filed by the financier in CrI.R.C(MD)No.266 of 2014 is bound to be dismissed and accordingly the same is dismissed.

To 1.The Judicial Magistrate, Vilathikulam.

2.The Inspector of Police, Kulathur Police Station, Tuticorin District.

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