

Sekar Vs. Arumugham

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Court : Chennai

Decided On : Aug-10-1999

Reported in : 2000CriLJ1552

Judge : A. Ramamurthi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 91, 202, 203, 226 and 451; [Indian Penal Code \(IPC\), 1860](#) - Sections 379

Appeal No. : Cri. Revn. Case Nos. 585, 586, 658 of 1999

Appellant : Sekar

Respondent : Arumugham

Advocate for Def. : Natarajan, Adv.

Advocate for Pet/Ap. : C.R. Sathindran, Adv.

Judgement :

ORDER

A. Ramamurthi, J.

1. Petitioner Sekar has filed two revision petitions (Cri. RC 585 and 586 of 1999) aggrieved against the orders passed in Cri MPs 1530 and 2049 of 1999 respectively in C.C. 121 of 1999 on the file of Learned Judicial Magistrate,

Manapparai, petitioner in Cri. R.C. 658/99 has preferred the revision aggrieved against the order passed by the learned I Additional District Judge, Trichy in Cri R.C. No. 117/98 dated 26-2-1999.

2. The case in brief for the disposal of all these revision petitions is as follows :

Petitioner Sekar filed petition under Section 451 of the Code of Criminal Procedure, seeking custody of the lorry bearing registration No. TN-45/D 5649 and also petition under Section 91 of the Code of Criminal Procedure for production of the said lorry before the Court. He filed a private complaint before the learned Magistrate for an offence under Section 379, IPC on the ground that the vehicle in question had been taken away by the respondent. The complaint was dismissed under Section 203 of the Code of Criminal Procedure by the learned Magistrate and aggrieved against this, the petitioner preferred Cri. R.C. 117/98 on the file of learned Additional District Judge, Trichy and the revision was allowed and aggrieved against this only, the Branch Manager, Bank of Madura filed the revision petition No. 658/99. The petitions filed by the petitioner-Sekar under Sections 451 and 91 Cr.P.C. were dismissed by the learned trial Magistrate and aggrieved against this only, the other two revision petitions are filed.

3. Learned counsel for the petitioner Sekar contended that the learned Magistrate erred in dismissing both petitions holding that the investigation is pending and as such, they cannot be called upon to produce the vehicle into the Court. He is the owner of the lorry in dispute and the registration certificate book also stands only in his name. The respondent has not claimed any rival ownership of the lorry and there is no impediment for directing the respondent to produce the lorry and also to give custody. The learned Magistrate failed to appreciate that keeping the lorry in the custody is illegal.

4. Learned counsel for the petitioner in Cri. R.C. 638/99 and the respondent in the other two revision petitions contended that the petitioner Sekar had availed a loan for a sum of Rs. 4 lakhs during November '94 from the Bank of Madura, cantonment Branch, Trichy towards purchase of Ashok Leyland Lorry. The petitioner executed a deed of hypothecation dated 9-11-1994 in favour of the bank and in terms of which had hypothecated the lorry in question as a security towards

the due repayment of the amount borrowed by him. The loan was repayable in 60 monthly instalments. In terms of Clause 14(3) of the deed of hypothecation, in the event of any default in the payment of the loan instalments, the bank had the right to seize the said lorry. As per Clause 15(b) of the said deed, the bank upon seizure of the vehicle was vested with the right to sell the same and appropriate the sale proceeds towards the outstandings due and payable to it. He had defaulted in payment of monthly instalments and as such, on 30-7-1998 the bank seized the said lorry. Aggrieved against seizure he filed a suit in OS 230/96 against the bank in District Munsif Court, Manaparai and the suit was ultimately dismissed. The petitioner also filed W.P. 17835/98 against the bank and ultimately, in view of the pendency of the suit, he was not permitted to invoke Section 226 of the Constitution and the writ petition was also dismissed. After exhausting all these remedies, he filed C.C. 210 of 1998 against the bank for alleged offence under Section 379, IPC. The learned Magistrate on recording the evidence of the prosecution witnesses and on conducting an enquiry under Section 202 of Criminal Procedure Code inter alia holding that for the seizure of the said lorry by the bank for the default in payment of instalments, the bank or its officers cannot be prosecuted for the offence of theft in the absence of mens rea. The petitioner filed the revision Cri. R.C. No. 117/98 before the learned I Additional District Judge, Trichy and the revision was allowed. Only the owner of the property can claim right to seize the vehicle and the petitioner cannot claim the right. The bank continues to be the owner of the lorry and as such, the dismissed of the petitions is proper and correct.

5. The parties in all the revision petitions are one and the same and as such, a common order is pronounced in all these revision petitions. The parties will be hereinafter referred to as they are described in Cri. R.C. 585 of 1999 to avoid confusion.

6. It is admitted that the petitioner has availed the loan of Rs. 4 lakhs during November '94 from the respondent towards purchase of the lorry in question. He also executed a deed of hypothecation dated 9-11-1994 in favour of the bank. The petitioner defaulted in payment of the monthly instalments and because of this, the respondent bank seized the lorry on 30-7-1998. The petitioner filed a petition

under Section 91, Cr.P.C. to send for the property to the Court and he also filed another petition under Section 451, Cr.P.C. to return the lorry in question to him since he claims that he is the owner of the property and the registration certificate stands in his name. These two petitions are dismissed by the learned Magistrate. Learned counsel for the petitioner mainly contended that the registration certificate book stands in the name of the petitioner and since he is the owner, the trial Court ought to have allowed both the petitions and as such, the dismissal is not proper and correct.

7. Learned counsel for the respondent contended that the petitioner hypothecated the lorry to the bank as a security and Clause 14(e) of the deed of hypothecation clearly indicates that in the event of any default in the payment of instalments, the bank had the right to seize the lorry. Moreover, according to Clause 15(b) of the said deed of hypothecation, the bank upon seizure of the vehicle was vested with the right to sell the same and appropriate the sale proceeds towards the outstandings due and payable to it. It is therefore clear from Clauses 14(e) and 15(b) of the deed that the respondent is entitled to seize the lorry in case of default. In spite of these provisions, after the seizure of the lorry by the respondent, it appears that the petitioner filed a private complaint before the learned Magistrate and the same was dismissed under Section 203, Cr.P.C. Aggrieved against this, the petitioner preferred revision before the learned Chief Judicial Magistrate, Trichy and the appeal was allowed, directing the learned Magistrate to dispose of the case in accordance with law. Aggrieved against this order only, the respondent has filed the other revision petition 658/99.

8. It is necessary to state that the petitioner filed a suit in O.S. 250/98 against the respondent bank on the file of District Munsif Court, Manaparai for a declaration that he is the owner of the lorry and also filed LA. No. 610/98 for a mandatory injunction. The petition was dismissed. Subsequently, he filed the suit in O.S. 187/98 on the file of Sub-Court, Kulithalai for damages and it is pending. Not satisfied with that, the petitioner filed writ petition and the same was dismissed by the Court. When the respondent has been empowered to seize the lorry under Clause 14(e), it cannot be said that the respondent has committed theft of the lorry when the petitioner has committed default in payment of instalments, the bank has

seized the lorry. The private complaint has been filed against the respondent for alleged offence under Section 379, IPC only and the learned Chief Judicial Magistrate, Trichy had directed the learned Magistrate to dispose of the case. Taking into consideration the fact that the respondent had seized the lorry in accordance with the power, I am of the view that it cannot be construed as a theft committed by the respondent and as such, the dismissal of the complaint by the learned Magistrate under Section 203, Cr.P.C. is proper and correct and the order by the learned Chief Judicial Magistrate is liable to be set aside. Similarly the dismissal of the two petitions filed by the petitioner under Sections 91 and 451, Cr.P.C. is also proper and correct for the simple reason that in view of the default committed by the petitioner, the respondent had seized the lorry. Even in the writ petition, the petitioner filed W.M.P. Wherein it is directed that he can pay the arrears; but however, the same was also not paid. In the light of these facts only, the learned Magistrate had dismissed these two petitions filed by the petitioner and there is no illegality or infirmity in the orders passed by the Courts below in these two petitions.

9. CrI. R.C. 585 and 586 of 1999 : Both revision petitions are dismissed. CrI. R.C. 658/99, for the reasons mentioned above the revision is allowed and the order passed by the learned Chief Judicial Magistrate, Trichy is set aside and the order passed by the learned Magistrate, Manaparai is restored. Consequently, CrI. M.Ps. 5101 and 5102 of 1999 are closed.

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