
(2000) 07 MAD CK 0003

In the Madras High Court

Case No : Criminal O.P. No. 11402 of 2000

Sunitha Mehata and M.S. Suyambu

APPELLANT

Vs

State Sub-Inspector of Police. Moontradappu, Tirunelveli
District. (Crl. No.48/99)

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Motor Vehicles Act, 1988 — Section 2(30)

Citation : (2000) 2 LW(Cri) 955

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : M. Liagat Ali, for the Appellant; M. Babu Muthu Meeran, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—This Criminal Original Petition has arisen in this way:

The first petitioner is the financier. The second petitioner is her power agent. According to the petitioners, one Srikandan of Muchanthivilai vila

house, Ayinkamam, Parasala Post. Trivandrum District Kerala State purchased a lorry bearing Registration No.KL6-3943 under a Hire Purchase

Agreement with the first petitioner. The agreement is in vogue. While so, the respondent herein seized the lorry on 07.04.1999 on the ground that

the lorry was allegedly used for transporting spirit, regarding which a case in crime No.48 of 1999 was registered by the respondent. The lorry

was produced before the judicial Magistrate. Nenguneri under P.R.No.233 of 1999. According to the petitioners, they are the financiers, there is

an endorsement of Hire Purchase Agreement in the R.C. Book, the hirer had committed default in payment of instalments, the vehicle is now lying

in the police station, it is subjected to decay, some of the tyres of the lorry have already become useless, the hirer had not come forward to take

claim of interim custody, now the lorry is gathering dust, and the first petitioner being the owner as per the Hire Purchase Agreement, the interim

custody should be granted to the petitioners. The petitioners sought for interim custody of the vehicle by filing an application before the learned

Judicial Magistrate, Nanguneri in CrI.M.P.No.1005 of 2000. The learned Judicial Magistrate rejected the request of the petitioners. The

petitioners preferred a revision in CrI. R.C. No. 13 of 2000 before the learned Principal Sessions Judge, who passed a one line order to the effect

that the revision petitioners are not entitled to the interim custody of the lorry bearing Registration No. K.L-6-3943. The criminal revision is

dismissed. Aggrieved by the orders passed by the learned Sessions Judge, the petitioners have come forward with the instant Criminal Original

Petition contending that the revisional court had not looked into the aspect that the petitioners are the de jure owners of the lorry as per the

endorsement made in the Hire Purchase Agreement, that they are entitled to the interim custody of the lorry.

2. Heard both the sides. In support of his contention, the learned Counsel for the petitioners drew my attention to Section 2(30) of the Motor

Vehicles Act, which recites as under:

(30) "Owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and

in relation to a motor vehicle which is the subject of a hire-purchase agreement, or an agreement of a lease or an agreement of hypothecation, the

person in possession of the vehicle under that agreement.

3. The learned Counsel also cited two authorities reported in Jagadeesan Vs. The State of Karnataka and Another, and Rajkumar N. Jain Vs.

Inspector of Police, P. 5, Police Station Madras, . The first decision reported in Jagadeesan Vs. The State of Karnataka and Another, relates to a

case where one George entered into a Hire Purchase Agreement with the finance company that R.C. also contained an endorsement regarding the

hire purchase, that later. George died, but his wife continued to pay the instalments, that later she committed default. The finance company took

possession of the vehicle and sent intimation to the R.T.O. that there was default

in regard to the payment of instalments as per the Hire Purchase

Agreement and the finance company had secured possession of the vehicle. Meanwhile one Alexander, brother of late George, gave a complaint

stating that the Car had been stolen. Then the Car was seized from the possession of the financier and produced into the Court. There were rival

claims from the financier and also from Alexander, brother of the late owner. In that case, a learned single Judge of the Karnataka High Court held

that the owner of the vehicle would include a person who is in possession of the concerned vehicle which is subject matter of Hire Purchase

Agreement and ordered returned of the vehicle to the financier as the vehicle was seized from his custody.

4. In the decision secondly cited in Rajkumar N. Jain Vs. Inspector of Police, P. 5, Police Station Madras, a single Judge of this Court has

observed that if the vehicle is purchased under the Hire Purchase Agreement, the financier is deemed to be the owner. It was also held that the

petitioner therein who was a third party financier was not at all concerned with the alleged offence and the interim custody can be given to him. The

question whether the finance company would become the owner sans possession was not considered in that case.

5. In matters relating to the motor vehicles, it has been held by various authorities that interim custody should generally be ordered to be given to

one in whose name registration certificate stands and who can put the vehicle to the best use. Considering the claim of the financier in P. Sekar

(Accused) v. State by Inspector of Police (1992 L. W. Cri 47) Padmini Jesudurai, J. has held that the investigating officer could seize the vehicle

only if an offence had been committed in respect of the property seized or if the same had been used for commission of crime. Neither the

financier, nor his Hire Purchase Agreement would come am way in picture so far as the offence for which the vehicle had been seized. It has been

observed that the vehicle is not seized in enforcement of any Hire Purchase Agreement. The rights flowing from the contract between the hirer and

the financier have to be worked out only in forums mentioned for which, namely, the Civil Court, but such rights cannot be enforced in criminal

court.

6. In the instant case, admittedly, the financier was not in possession of the

vehicle to attract the provision of Section 2(30) of the Motor Vehicles

Act to hold him as the person entitled to interim custody. Further, when the remedy of the financier lies elsewhere, he cannot seek recourse to this

Court and seek this Court to enter in to the civil rights. This petition is therefore dismissed.