

(2011) 10 MAD CK 0094

Madras High Court (Madurai Bench)

Case No: Criminal RC. (MD) No. 74

M/s. Cholamandalam
DBS Finance Ltd., Now
known as
Cholamandalam
Investment and
Finance Company
Limited

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Oct. 18, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 451, 459

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: G.R. Swaminathan in all Criminal R. Cs, for the Appellant; P. Kandasamy,
Additional Public Prosecutor for R-1 No appearance for R-2 in all CrI.R.Cs., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice S. Palanivelu

1. The following are the allegations contained in the applications filed by the petitioner before the Court below u/s 459 Cr.P.C.:-

This Court passed orders for release of vehicles bearing Registration Nos.TN 59 AA 1645, TN-59-V-9855 and TN-59-AD 6354 which are under hypothecation with the petitioner finance company at Madurai. After the release of the vehicles they are lying in the yard till date and the condition of the vehicles are becoming worsen. As the market value of the vehicles are getting down, the petitioner company has also sustained huge

loss. Hence, the petitioner's company is in a position to sell the said vehicles. Therefore the petitioner may be permitted to sell the vehicles and to return the RC books of the vehicles.

2. The learned Judicial Magistrate No. III, Madurai, after hearing both sides, dismissed the applications vide separate orders that if the petitioner is permitted to sell the vehicles those vehicles could not be marked at the time of trial and that the return of the vehicles for the purpose of selling will prejudice the trial of the case. Hence the petitioner is before this Court with these revisions.

3. The learned counsel for the petitioners Mr.G.R.Swaminathan would contend that it is a known fact that if the vehicles were allowed to remain in open place and even if they were kept in a protected place, the utility and value of the vehicles will go down and to keep the vehicles till the disposal of the trial will not serve any purpose.

4. Heard the learned Additional Public Prosecutor Mr.P. Kandasamy, who raised opposition and submitted that there is no flaw in the orders passed by the Court below.

5. Section 451 Cr.P.C. confers much power on the Court dealing with the custody and disposal of case properties. It enables the Judicial Magistrate to pass appropriate orders as per the circumstances warranted. Much celebrated decision of Supreme Court on this point is in [Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat](#), wherein Their Lordships have elaborately dealt with the powers of the Court in the matter of entrusting the vehicles and disposal of different case properties in given circumstances. The Apex Court intends strict compliance of its direction which would be applicable to in respect of any property. Irrespective of the facts and circumstances of the case, the Court is bound to deliver the seized property to the claimant or to any of the rival claimants. In the similar way, the Court has also got power to dispose of the property, if it is subject to natural decay. Section 451 of Cr.P.C. reads as follows:

451. Order for custody and disposal of property pending trial in certain cases.:—When any property is produced before any Criminal Court during an inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation:—For the purposes of this section, "property" includes—

(a) Property of any kind or document which is produced before the court or which is in its custody.

(b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

The term "otherwise" contain in the provision would give discretion to the Court to act according to the circumstances of the case. Section 459 empowers the Court to order the sale of the property, if it is subject to speedy and natural decay.

6. When the Court finds that it is no longer necessary to keep the case property under the custody, it had to return the same to the person who is competent to get it. The Court is required to make an enquiry to ascertain who is the party eligible to get interim custody of the property. Likewise, if the property is of such a nature, that it would lose its value and utility, then the Court may also order for the sale of the property and direct that the proceeds be deposited into the Court. In one of such occasions arose before this Court in 2011 (1) MLJ 191 Sundaram Finance Ltd., v. State of Tamil Nadu C.T. Selvam,J. has expressed his view that the return of the vehicles and permission for sale thereto should be the general norm rather than the exception as it is today and in case where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be the common good. The learned Judge has also referred the decision of Sundarbhai Ambalal's case (supra) and also other decisions of the Supreme Court and reached a conclusion that none gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial, that it would 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 and that it is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all. I am in respectful agreement with the opinion rendered by the learned Judge.

7. The following excerpt is found in the Book Code of Criminal Procedure by Sengupta Volume 2 First Edition 2010 in page No. 2045:

Transferred vehicle was seized pursuant to a complaint lodged by bank. Section 451 confers discretionary power on the Court. Tractor is an automobile, subject to natural decay. Bank will not be benefitted if the tractor remains idle. Therefore, even if the tractor is the case property, expediency of situation demands that the bank be permitted to sell the tractor subject to the following terms and conditions:

(a) the sale proceeds of the tractor shall be deposited with the trial court may deem appropriate, upon the conclusion of the trial;

(b) the documents of sale, shall incorporate the fact that the tractor is case property and is required to be produced before the trial Court as and when so directed. The purchaser of the tractor would file an undertaking before the trial Court, to physically produce the tractor as and when so directed by the trial Court.

(c) the purchaser of the tractor shall also furnish a security equal to the amount of security furnished by the bank;

(d) the purchaser of the tractor shall not alienate the tractor any further, without prior permission of the trial Court; and

(e) the transfer of ownership, shall be subject to such orders that the trial Court or any other Court

may pass on conclusion of trial.

(f) all terms and conditions already imposed, at the time of release of sapurdari shall remain in force.

8. In view of the above said position of law, I am of the considered view that the petitioners may be permitted to sell the vehicles and they may be directed to deposit the proceeds into the court and further direction as to the payment of such deposits shall be subject to the nature of final disposal of the case.

9. In view of the above, all the three Criminal Revision Cases are allowed under the following conditions:

a) The concerned Court shall fix a date for production of the vehicles for the purpose of taking photographs and also panchnama thereof.

b) The photographs and the panchnamas shall be marked at the time of trial of the case instead of marking the vehicles.

c) The petitioner is permitted to sell the vehicles and deposit the sale proceeds into the Court which shall be in deposit till further orders of the trial Court.

d) The Registration Certificate of the vehicles shall be returned to the petitioner.

e) The condition that the bond executed by the petitioner with one solvent surety as directed by this Court already shall continue to exist.