

Case No. 11

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10/11/2003

CORAM

THE HONOURABLE MR. JUSTICE D.MURUGESAN

Writ Petition No.18252 / 2003  
and W.P.M. P. No. 22805/2003

Lakshmi General Finance Limited represented  
by its Manager (Legal) S.L. Mohan,  
Desabandhu Plaza, 47, Whites Road,  
Chennai - 600 014

Petitioner

Vs.

1. Inspector of Police (Crimes)  
B1 Salem Town Police Station,  
Salem District

2. Mrs. B.Radha

Respondents

**Hypothecation agreement - default by borrower - repossession by the financier - theft complaint - police seized the vehicle from the financier's custody. Writ petition for directing police to handover the vehicle - Petition allowed - police directed to return the vehicle forthwith.**

For Petitioner : Mr. Vijay Narayanan  
for Mr. G.R. Swaminathan

For 1st Respondent : Mr. S.V. Duraisolaimalai  
Govt. Advocate

For 2nd Respondent : No appearance

## ORDER

By consent of both parties the Main Writ Petition itself is taken up for final disposal.

2. The petitioner is "Lakshmi General Finance Limited". The second respondent entered into a hypothecation agreement to purchase a Toyota Qualis vehicle with the petitioner and executed hypothecation agreement on 11-12-2002 and availed a loan of Rs.4,40,000/- with interest at 14.97% per annum. The said loan amount should be paid in 35 monthly instalments at Rs.15,400/- The second respondent as repaid only four monthly instalments and she defaulted the further instalments from 11-4-2003.

3. Since the second respondent has committed default in payment of instalments as per clause 14.2 of the agreement and clause 4 of the Power of attorney the petitioner had taken possession of the said vehicle. Immediately on taking over possession, the petitioner had sent a telegram at 7:00 A.M. to the first respondent on 28.6.2003. It appears that the driver of the second respondent on the same day at about 10:00 A.M. gave a complaint to the first respondent about the missing of the said vehicle on the ground that either the vehicle must have been stolen or it must have been taken over by the petitioner. The vehicle was thereafter seized by the first respondent and kept in the police custody. Questioning the seizure, the petitioner has approached this court for a direction to the first respondent to return the vehicle to the petitioner.

4. The Writ Petition is resisted by the first respondent by filing a counter that the vehicle was seized on a complaint from the driver of the second respondent.

5. Infact in the counter it is admitted that the vehicle was seized for non payment of instalments under hypothecation agreement. The question as to the power of the police to seize such vehicle had come up for consideration before this Court including the Apex Court on more than one case. Infact, it is more useful to refer to one decision of the Apex Court in the judgment reported in TRILOK SINGH Vs. SATYADEO TRIPATHI ( AIR 1979 SC 850) wherein the Apex Court has quashed the complaint itself on the ground it is abuse of process of Court. So long as the petitioner in the capacity of a financier is entitled to seize the vehicle for non payment of instalments as covered under the hypothecation agreement as well as the power of Attorney such seizure cannot be considered as any offence requiring registration of any criminal case as it is a civil dispute between the financier and the buyer, though the vehicle

was seized by the first respondent on the premise that it was stolen and on investigation it came to light that the same was seized by the petitioner / financier only for the non payment of instalments.

This fact is evidenced from the counter affidavit filed by the first respondent and therefore there is absolutely no reason as to why this vehicle should be kept in the police station. In this regard it must be pointed out that though the second respondent was served and her name is shown in the cause list, she did not appear either in person or through counsel. Hence, it must be presumed that she is not interested in pursuing the matter. It would only be proper for this Court to direct the first respondent to hand over the vehicle to the petitioner forthwith on production of this order.

6. The learned Government Advocate however submitted that the matter is already ceased by the competent Criminal Court. Though such submission is made from the counter affidavit I do not find anything to show that the matter is pending with the Magistrate except the respondent stating that a case was registered and the vehicle was seized.

7. That apart, when the petitioner had earlier come up before this court for the grant of anticipatory bail in CrI. O.P. No. 20871 / 2003 it was represented on behalf of the learned Government Advocate (criminal side) that as on 9.7.2003 no case was registered against the petitioner by the respondent police and no enquiry was pending. This stand taken by the respondent is not found in the counter affidavit filed but it is stated that a case was registered on 28.6.2003 in crime no. 279 / 2003 under section 379 I.P.C. In view of the above inconsistent stand there is every doubt even in entertaining the complaint from the driver of the second respondent. Accordingly, I find every merit in grievance espoused by the petitioner in the Writ Petition.

8. For all these reasons, this writ petition is allowed and the first respondent is directed to return the vehicle forthwith to the petitioner on production of the copy of this order. No Costs. Consequently W.P.M.P. 22805 / 2003 is closed.