

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 194 of 2015

JUDGMENT:-

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. questioning the order dated 21.01.2015 passed in CrI.M.P.No.112 of 2015 on the file of VII Additional Judicial Magistrate of First Class at Rajahmundry.

The case of the prosecution is as under:

On receiving credible information about diversion of PDS kerosene oil from Sri Lakshmi Ganapathi Agencies at Dulla village of Kadiyam Mandal to black market, the Inspector of Police, Vigilance & Enforcement Department and his staff along with the officials of Civil supplies Department proceeded to the spot and found 3049 litres of blue Kerosene oil and 20 liters of white kerosene oil and some chemicals in the premises. When questioned, the petitioner, who is the proprietor of Sri Lakshmi Ganapathi Agencies, is alleged to have stated that he has purchased blue kerosene oil from retailers and selling the same to customers by changing its colour into normal by using chemicals. The vigilance authorities seized the PDS kerosene oil, chemicals and also the oil tanker bearing No.AP 12V 4314 in the presence of mediators. Basing on these allegations, a case in Crime No.462 of 2014 of Kadiyam Police Station, Rajahmundry Urban, came to be registered for the offences punishable under Sections 3(i), 3(ii) and 4 (ic) of the Kerosene (Restriction on use and Fixation of Ceiling Price) Order, 1993, A.P. State Public Distribution System (Control) Order 2009 and under Section 7 of the Essential Commodities Act, 1955 (for

short 'the Act').

Pending investigation, the petitioner filed CrI.M.P.No.112 of 2015 before the Court of the VII Additional Judicial Magistrate of First Class at Rajahmundry seeking interim custody of the vehicle, which was rejected on 21.01.2015 on the ground that the said petition is not maintainable. Challenging the same, the present revision is preferred.

A perusal of the material placed before the Court would show that the petitioner is the owner of the oil tanker bearing No.AP 12V 4314. Initially an objection was raised by the learned Additional Public Prosecutor contending that the proceedings under Section 6-A of the Act are already initiated, the Court has no jurisdiction to entertain the application. But, on instructions he submitted that no proceedings under Section 6-A of the Act were initiated. The Additional Public Prosecutor though opposed the application, but did not dispute the ownership of the vehicle. However, it is not in dispute that the fact of seizure of the oil tanker in Crime No.462 of 2014 of Kadiyam Police Station, Rajahmundry Urban, was brought to the notice of the Court. In the absence of any proceedings under Section 6-A of the Act, this Court is of the view that the present application can be entertained though by mistake a petition under Section 451 Cr.P.C. came to be filed instead of 457 Cr.P.C.. It is also brought to the notice of the Court that the oil tanker was seized with a load of kerosene, but the same was emptied later. The learned counsel for the petitioner submits that there is every possibility of the vehicle getting damaged, if it is kept idle in the police station.

In ***Surenderbhai Ambalal Desai v. State of Gujarat***^[1], the Apex Court has laid down that in case of vehicles seized during investigation, they should not be allowed to deteriorate by being kept unused and unattended in the premises of the Police Stations. Therefore, the vehicle has to be entrusted to the interim custody of the petitioner subject to appropriate conditions.

Taking into consideration the facts and circumstances of the case and having regard to the principles of law laid down by the Apex Court in the decision stated supra, I am inclined to grant interim custody of the oil tanker bearing No.AP 12V 4314 seized in Crime No.462 of 2014 of Kadiyam Police Station, Rajahmundry Urban, in favour of the petitioner on the following terms.

- i) The petitioner shall execute a personal bond for Rs.4,50,000/- (Rupees four lakh fifty thousand only) with one surety for a like sum to the satisfaction of the VII Additional Judicial Magistrate of First Class at Rajahmundry.
- ii) The petitioner shall deposit the original Registration Certificate of the vehicle in the Court.
- iii) The petitioner shall give an undertaking to produce the vehicle as and when required either by the Investigating Agency or the Court and also give an undertaking not to alienate, encumber or alter the physical features of the vehicle.

Accordingly, the Criminal Revision Case is allowed.

C. PRAVEEN KUMAR, J

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[\[1\]](#) (2002) 10 SCC 283