

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.100 OF 2015

ORDER:

The present Revision is filed by the petitioner/owner of the vehicle under Sections 397 and 401 of Cr.P.C. seeking interim custody of Auto bearing No.AP-20-TA-7583 seized in Crime No.234 of 2014 of Palvanha (R) Police Station, Khammam District, registered for the offence punishable under Section 34(e) of the A.P. Excise Act.

Pending investigation in the above crime, the petitioner who is the owner of the vehicle filed an application under Section 457 Cr.P.C. seeking interim custody of the same. But the same was returned by the learned Magistrate basing on the judgment of the Apex Court in **State NCT of Delhi v. Narender**. Aggrieved by the same, the present Revision is filed.

The issue that arises for consideration is "Whether the Court has got power to grant interim custody of the vehicle?"

In **P.Swarupa v. State of A.P.**, a Division Bench of this Court held that the Court has jurisdiction to entertain an application for interim custody of the property if the case is exclusively registered under the provisions of the Andhra Pradesh Prohibition Act or under the provisions of the A.P. Excise Act and A.P. Prohibition Act. The Division Bench further clarified that if the case is laid exclusively under the provisions of the A.P. Excise Act, it is the Deputy Commissioner of Excise who is entitled to dispose of the property.

In **Chindura Muthaiah & Co., Kamareddy, Nizamabad District, A.P. v. Deputy Commissioner of Prohibition and Excise, Karimnagar, A.P.**, the Court ordered return of a vehicle involved in an offence under Section 34(e) of the Excise Act.

In an unreported decision in Criminal Revision Case No.2484 of 2012, dated 11-12-2012, (**M/s. Amruthavarshini Dairy Farms Pvt. Ltd. v. The State**), the petitioner was involved in an offence under the Prohibition Act. On the basis of **P.Swarupa's** case, the Court considered it appropriate to return the vehicle. Further, in **Public Prosecutor v. G.Marimuthu Konar's** case, the Court held that even when the property is seized under the provisions of the Forest Act, a Judicial Magistrate of First Class is entitled to grant interim custody of the vehicle under the provisions of

Section 457 Cr.P.C. In view of these decisions, it is contended by the learned counsel for the petitioner that the petitioner is entitled to interim custody of the property.

In **State (NCT of Delhi) v. Narender**, which was relied upon by the trial court while rejecting the bail application, it was found that the vehicle in the said case was carrying contraband and the same was rejected as Section 61 of the Delhi Excise Act places an embargo on jurisdiction of courts to make an order with regard to the property used in commission of an offence under the said Act and as the court has no jurisdiction to exercise power under Section 451 Cr.P.C. for ordering release of the vehicle. It was a case which was registered under the provisions of Delhi Excise Act.

In **K.Dinesh Kumar v. State of Telangana** a learned Single Judge of this Court observed as under :

“4.This Court is of the view that even though the vehicle is not in the custody of the Court, if it is brought to the notice of the Court that the vehicle is in the custody of the police with whom the F.I.R. is pending, the Court has to pass appropriate orders. Therefore, instead of remanding the matter to the trial Court, this Court feels it just and appropriate to dispose of the petition with the following direction.”

Similarly in Crl.P.No.13003 of 2014 a learned Single Judge of this Court while distinguishing the judgment of the Apex Court in Narender's case, held that the Court has got power to release the vehicle in favour of the petitioner, who is the owner of the vehicle subject to the result of the inquiry and trial.

In **Surenderbhai Ambalal Desai v. State of Gujarat**, 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.

In Crl.R.C. No.585 of 2014 and in Crl.R.C.No.2484 of 2012 this Court ordered release of vehicles, though the case was registered under Section 34 of Excise Act.

Further, the Public Prosecutor on instructions submitted that the vehicle is in custody of police and there is no dispute with regard to the ownership.

Accordingly, the Criminal Revision is allowed by setting aside the order in Crl.M.P.

(SR) No.2395 of 2014 in Cr.No.234 of 2014 on the file of III Additional Judl. First Class Magistrate, Kothagudem, Khammam District. The Petitioner is granted interim custody of the Auto bearing No. AP-20-TA-7583 subject to following conditions :

1. The petitioner shall execute a personal bond for Rs.1,00,000/- with two sureties for a like sum each to the satisfaction of the learned III Additional Judl. First Class Magistrate, Kothagudem, Khammam District.
2. That the petitioner shall produce the vehicle before the trial court or the investigating agency, as and when directed by them;
3. that the petitioner shall not alienate or dispose of the vehicle without prior permission of the trial court; and
4. that the petitioner shall maintain the vehicle in the same good condition in which it is released without making any alterations.

Miscellaneous petitions pending, if any, in this Revision shall stand closed.

C. PRAVEEN KUMAR, J

Date:20.03.2015

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