

*** HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION No.6667 OF 2015

% 27-07-2015

Kotha Komurelli

....Petitioner

Vs.

\$ The State of Telangana,

rep., by Public Prosecutor ... Respondent

!Counsel for the petitioners : C.Hari Preeth

Counsel for the Respondents: Learned Public Prosecutor for Telangana

<Gist :

>Head Note:

? Cases referred:

1.AIR 2003 SC 638

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6667 OF 2015

ORDER:

This Criminal Petition is filed by the petitioner/A1 under Section 482 Cr.P.C seeking to quash the order dated 16.05.2015 in CrI.R.P.No.33 of 2015 in CrI.M.P.No.354 of 2015 passed by VI Additional Sessions Judge, Warangal at Mahabubabad.

Heard the learned counsel for the petitioner and the learned Public Prosecutor (Telangana) for the State.

The petitioner is A1 in crime No.215 of 2014 registered for the

offence punishable under Sections 420, 364-A, 386, 496, 327 r/w 34 I.P.C. of Narasimhulapet Police Station, Warangal District, wherein Maruti Alto car bearing No.TS 03 EC 2829 of the petitioner was seized as part of the property used for commission of the crime supra in abducting a child.

The petitioner herein filed Crl.M.P.No.354 of 2015 in the above said crime for interim custody of the said vehicle and the learned Magistrate by impugned order dated 16.03.2015 after hearing the learned Additional Public Prosecutor in opposing the same with reference to counter dismissed the petition saying that A2 to A4 are involved in similar crimes viz., crime No.45 of 2013 of Thorrur Police Station under Sections 341, 326 r/w 34 I.P.C., C.C.No.214 of 2013(Crime No.123 of 2012 of Narsimhulapet Police Station) under Sections 452, 506, 323, 290 r/w 34 I.P.C., C.C.No.493 of 2012(crime No.244 of 2013) under Section 302, 506 I.P.C. P.R.C.No.25 of 2014 (crime No.199 of 2014 of Narsimhulapet Police Station) under Sections 447, 379 r/w 34 I.P.C so far as A2 is concerned; and so far as A4 is concerned crime No.33 of 2014 of Narsimhulapet police station, C.C.No.129 of 2014 and crime No.199 of 2014 and it is observed that the petitioner/A1 and other accused of crime purchased the car by extracting money from the *de facto* complainant and registered it on the name of the 1st petitioner and that they are professional offenders and further observing that the petitioner did not disclose in his said application for interim custody of the vehicle standing in his own name, all the above facts and thereby there are no bonafides and the investigation is in progress and it is not a fit case to order for interim custody of the vehicle. Impugning the same, Crl.R.P.No.33 of 2015 was filed before VI Additional Sessions Judge, Warangal at Mahabubabad. By order dated 16.05.2015, the learned Sessions Judge also dismissed with an observation that the vehicle in question was used by the accused in committing the offences, which are serious in nature and the revision petitioner was also one of the accused in the said offences, thereby not inclined to grant interim custody of the vehicle. Impugning the same, the present criminal petition under Section 482 Cr.P.C. is filed to quash the impugned order to prevent the abuse of process and to pass any order to sub-serve the ends of justice.

In the application filed for interim custody, it is mentioned that the

property if kept idle being rusted and damaged without maintenance, that results irreparable loss to him being the owner of the vehicle which he purchased about three years back and he is ready to furnish surety or solvency to the said property and abide by such conditions and terms.

The Apex court in **Sunderbhai Ambalal Desai v. State of Gujarat** dealt with in detail in relation to different kinds of custody. There was also a direction while ordering custody of the vehicle from being damaged by rust and disuse to obtain photographs and panchanama including to use the same if necessary as evidence during trial. Needless to say, this Court in **Crl.P.No.1404 of 2006 between Shah Nainimal Jain v. State of Andhra Pradesh dated 24.03.2006** held that under the guise of interim custody to keep the property as it is in condition without change of utility or transfer, the person once was given interim custody from *prima facie* claims as entitlement; he is bound to produce the same during trial when directed by Court and cannot take shelter and Court is entitled to even take coercive steps for its production, as and when required.

So far as the 1st petitioner/A1 is concerned, from the counter filed by the police supra, there is nothing to show he is involved in any other cases. There is nothing even to show the vehicle is purchased with the booty of the four accused persons outcome of the amount realized by committing crimes. *Prima facie*, the vehicle stands in the name of A1, who is the petitioner, who is deemed to be owner under Section 2(30) of the Motor Vehicles Act. He claims that he is the purchaser. A perusal of the registration certificate of the vehicle (Xerox copy) filed shows that the petitioner purchased the same with finance from Sundaram Finance Limited and the date of registration was 29.10.2014 valid upto 28.10.2029. The material *prima facie* shows that, the petitioner purchased the vehicle in his name with finance from Sundaram Finance Limited. It is hardly believable of the same purchased with some money extracted by committing crimes for the joint benefit of four accused, said conclusion arrived by the Courts below in saying they may misuse if allowed interim custody using the vehicle in committing similar crimes in future and thereby not entitled in the larger interest of the society, is thus no way sustainable.

Having regard to the above, the orders are unsustainable and the petitioner is entitled to interim custody of the vehicle subject to his executing a bond on Rs.100/- stamp paper for a value of Rs.4,00,000/- (Rupees Four lakhs only) and the trial Magistrate shall order for interim custody of the vehicle and in the bond, he shall state specifically that he shall not use the vehicle or not allow anybody to use to commit any crime or for any illegal acts and shall maintain the vehicle in his own custody and enjoyment as it is in good condition, without changing the utility and without transfer and also a direction to be made to the R.T.O. not to register the vehicle for any transfer and the Magistrate shall make endorsement in the original

C-Book of the vehicle is required in the case and given interim custody only to make it in use which is subject to final orders and obtain panchanama and photographs for future reference and requirement.

With the above directions and observations, this Criminal Petition is disposed of.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:27-07-2015

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**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CRIMINAL PETITION No.6667 OF 2015

Between:

Kotha Komurelli

... Petitioner

and

The State of Telangana,

Rep. by its Public Prosecutor

... Respondent

DATE OF JUDGEMENT PRONOUNCED: 27-07-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

1. Whether Reporters of Local newspapers

may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be Yes/No

marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wish to Yes/No

see the fair copy of the Judgment? Yes/No