

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.9514 of 2015

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ORDER:

Heard.

The petitioner's vehicle bearing No.AP-22-Y-9252 was seized by the 4th respondent on 17-09-2014 in connection with a case in PRC.No.89/14-15, dated 25-04-2014. While the said crime is under investigation, the petitioner filed Crl.M.P.No.1801 of 2014 before the Judicial Magistrate of First Class, Kodangal, seeking interim custody of the said vehicle. The learned Magistrate, however, dismissed the said application on 22-08-2014 holding that since the vehicle in question is submitted to the Deputy Commissioner of Excise, Mahabubnagar, the Criminal Court cannot grant interim custody of the vehicle. Questioning that order, the petitioner filed Crl.P.No.10311 of 2014, which was allowed on 16-09-2014 directing the 2nd respondent-police therein to return the vehicle in question to the petitioner on condition of the petitioner executing a bond for Rs.1,00,000/- to the satisfaction of the Station House Officer concerned. The petitioner was also directed not to alienate or change the nature of the vehicle and produce it as and when required by the Court at the time of trial. The petitioner has accordingly obtained interim custody. Subsequently, the 3rd respondent considered the entire matter and by exercising powers under Section 13 of the A.P.Prohibition Act, directed confiscation of the vehicle. Against that order, the petitioner preferred W.P.No.36487 of 2014. The said writ petition was, however, not entertained in view of efficacious alternative remedy available to the petitioner by preferring an appeal against the order of the 3rd respondent. Hence, by order dated 28-11-2014, dismissed the writ petition giving liberty to the petitioner to avail alternative remedy. The petitioner has filed an appeal before the Commissioner on 16-12-2014. Under the impugned order, the Commissioner has declined to entertain the appeal on the ground that it is filed 29 days beyond the time limit of 60 days as provided under Section 46-C of the A.P.Excise Act, 1968. The said order of rejection is questioned in the writ petition.

Learned counsel for the petitioner is not able to show any provision under which the Commissioner could condone the delay in entertaining the appeal. The order impugned, therefore, declining to entertain the appeal cannot be interfered with.

Alternatively, learned counsel for the petitioner submitted that since the petitioner has already received the vehicle by way of interim release, the confiscation thereof as per the subsequent orders passed could cause serious prejudice to him.

In such matters, even if the vehicle is confiscated, the 3rd respondent would sell the vehicle by way of auction and recover the value. Hence, in order to secure the value of the vehicle and at the same time give an option to the petitioner to retain the vehicle, I deem it appropriate to dispose of the writ petition with the following directions:-

The 3rd respondent shall get the value of the vehicle assessed through the Motor Vehicle Inspector of the area where the vehicle was seized. The petitioner shall produce the vehicle before the 3rd respondent as and when called upon so as to enable the Motor Vehicle Inspector to assess the value thereof and submit valuation report before the 3rd respondent. After obtaining valuation report accordingly, the 3rd respondent shall give an opportunity to the petitioner to deposit the value so assessed within a week's time thereafter and if the petitioner complies with the deposit accordingly, the vehicle be released to the petitioner in lieu of confiscation of the value of the vehicle, which shall be appropriated by the 3rd respondent.

In the event of the petitioner failing to comply with the directions, as above, the 3rd respondent is at liberty to auction the vehicle, in pursuance of confiscation already effected.

Accordingly, the writ petition is disposed of. No order as to costs.

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

VILAS V.AFZULPURKAR, J

Date: 07-04-2015

Prv

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