

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE NOS.607 AND 647 OF 2017

COMMON ORDER:

Impugning the dismissal order of the interim custody of the lorries bearing Nos.NL-02-5062 (old registration No.AP-35-T-8609) and NL-02-N-4903 (old registration No.AP-31-TA-9259) dated 26.10.2016 and 28.10.2016 in CrI.MP.Nos.3187 of 2016 and 3188 of 2016 in Crime No.73 of 2016 of Anakapalli Rural Police station, Visakhapatnam sought by the petitioners-accused, Smt. Mallapragada Sujatha and E.M.Dakshina Murthy, respectively, the revisions are maintained.

It is observed particularly at para-11 of the orders of the lower Court that the lorries in question along with other lorries if disappeared after giving interim custody, it is difficult to prove the case of the prosecution of the tampering of laden weight and once registration is cancelled, the vehicles cannot run on public roads and thereby cannot be returned for interim custody.

The contentions in the grounds of the two revisions *vis-à-vis* the oral submissions of the learned counsel are that unless the vehicles are allowed to ply, they will become junk, not only the tyres and other parts of the vehicles but also for the vehicles mostly made of iron and the utility and value being diminished and the petitioners undertake to maintain the vehicles while in custody as it is in condition without any damage or transfer, that, the lower Court ought to have allowed the applications and hence the dismissal orders being unsustainable are liable to be set aside.

Learned counsel also placed reliance on the order dated 09.03.2017 in CrI.RC.No.614 of 2017 of another Bench of this Court in same crime, in ordering interim custody of lorry bearing No.NL-02-N-5061 (old registration No.AP-35-T-7941) to accused No.3, Smt. Kurada Sarada.

Whereas, it is the submission of the learned Public Prosecutor representing the State that there are no grounds to grant interim custody and otherwise further safeguards are to be taken in passing the order as the order referred in CrI.RC.No.617 of 2017 dated 09.03.2017 not provided the necessary safeguards to secure back the vehicle during trial.

Heard. Perused the material on record.

As per the expression of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat**¹, there are guidelines and directions in relation to the interim custody, more particularly the vehicles while in use if kept in idle for becoming junk ultimately with no value.

Here the *modus operandi* alleged was increasing of the laden weight and change of registration without NOC from the RTA of Vizianagaram into Nagaland registration by transfer of the vehicle as if it had got heavy laden weight vehicle (Heavy Goods Vehicle).

As pointed out in the impugned order, the requirement of the vehicle during trial is required. But for that, the interim custody can be permitted subject to securing back the vehicle by necessary safeguards.

¹ AIR 2003 SC 638

Perused the so called covered order in CrI.RC.No.614 of 2017. It is on personal bond of Rs.50,000/- with two sureties and not to transfer, vehicle ordered to be released. That will not safeguard the interest of the prosecution particularly when the vehicle is required to be produced physically during trial.

Having regard to the above while ordering interim custody, the petitioners-owners of the vehicles are required to produce the vehicles as and when called by the trial Court and to furnish for each vehicle a bank guarantee or immovable property security worth Rs.6,00,000/- or above as per Sub-Registrar basic value by depositing the original title deeds by execution on Rs.100/- stamp paper in favour of the Court admitting creation of the equitable mortgage and execute bond undertaking to produce the vehicle as and when required by trial Court and to see that it shall be maintained as it is in condition without any tampering or removing and replacing of the existing numbers inscriptions or writings on the engine or chassis or other parts. The learned Magistrate is also directed to direct the RTA concerned of Nagaland and RTA, Vizianagaram respectively not to permit any transfer of the vehicles. It is also ordered the learned Magistrate while release of the vehicles as an additional safeguard to get video coverage of existing chassis and engine numbers and existing laden weight proof to make use of the same during trial, if necessary. The learned trial Magistrate for any violation got right to forfeit the bond and impose penalty the whole or part of amount of security under Section 53 of the Indian Penal Code, besides other steps to secure back the vehicle.

Accordingly, the two revisions are allowed. Miscellaneous petitions, if any, pending shall stand closed.

(Dr. B.SIVA SANKARA RAO, J)

22nd March 2017
RRB

