

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.614 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), is filed by the petitioner/A-3, having been aggrieved of the order, dated 22.12.2016, passed by the learned V Metropolitan Magistrate, Anakapalle, Visakhapatnam District, passed in CrI.M.P.No.5438 of 2016 in Crime No.73 of 2016 filed under Section 451 of the Code for return of the lorry bearing registration No.NL 02 N 5061, old registration No.AP 35 T 7941 (hereinafter referred to as 'subject lorry'), lying at RTA, Vizianagaram, for interim custody.

2. I have heard the submissions of Sri P.Veerraju, learned counsel for the petitioner, and of learned Public Prosecutor, State of Andhra Pradesh, representing the respondent. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The petitioner is the owner of the subject lorry. She, along with three other owners of three other Lorries filed application in the office of the RTA, Anakapalle, along with relevant documents, requesting to effect change of addresses of the owners of the said vehicles. After necessary verification from the official website of the department and as 'No Objection Certificates' were found genuine, changes of addresses of the owners of the said four vehicles, including that of the petitioner, were affected. However, on 18.04.2016, a complaint has been filed by one

G.Srinivasa Rao alleging that the petitioner herein and others, who are the owners of the vehicles, suppressed the fact that the said vehicles were already registered earlier in Vizianagaram and Visakhapatnam Districts, but, again obtained 'No Objection Certificates' for the same vehicles from a place at Nagaland to get the same vehicles entered in the records of the RTO, Anakapalle, by altering the Gross Vehicle Weights of the vehicles with a motive to get authorisation to carry more laden weight. Basing on the said complaint, a case in Crime No.73 of 2016 for the offences punishable under Sections 420, 468, 471 and 474 read with Section 34 of the Indian Penal Code, 1860, was registered by the Station House Officer, Anakapalle Rural Police Station, against the petitioner herein and the other owners of the vehicles. During the course of investigation into the said crime, the subject lorry was seized. In this factual background, the petitioner filed the application aforesaid in the introductory paragraph of this order for return of the subject lorry *inter alia* claiming that the petitioner is the owner of the subject lorry and that if the vehicle is kept idle, it will get rusted and damaged and as all vehicular documents are produced the vehicle may be returned by ordering interim custody of the vehicle to the petitioner. The said application was resisted by the respondent by raising various contentions apart from the contention that the registration of the subject lorry was cancelled by the Regional Transport Authority, Anakapalle, as per procedure established by law and that if the vehicle is returned there is a chance of making the vehicle to disappear and that in such a case, it would be difficult to produce the vehicle before the trial Court during the course of trial. On merits and by the order impugned herein, the said

application filed by the petitioner for interim custody of the vehicle was dismissed by the Court below. Aggrieved thereof, the petitioner filed this criminal revision requesting to set aside the order of the learned Magistrate and order interim custody of the subject lorry to the petitioner.

4. At the hearing, learned counsel for the petitioner, while submitting the core facts of the case and reiterating the contentions of the petitioner, which are narrated *supra*, sought return of the subject lorry to the petitioner on the following among other grounds: 'A false case was registered on a false complaint. It appears that it was falsely alleged that the agent of the parties at Nagaland indulged in forgery of certain documents. The ingredients of the complaint/report do not attract the penal provisions. Be that as it may, the cancellation of registration of the subject vehicle is illegal. The petitioner is pursuing legal remedies. The subject lorry is now kept openly on the margin of a public road near RTC bus stand of Anakapalle, without even posting a Guard to keep watch over it and therefore, it is exposed to not only meddling by miscreants but also possibility of theft. If not the subject lorry, but, its valuable parts are committed theft of, the petitioner would be put to loss, which cannot be compensated. If the subject lorry is allowed to be exposed to the inhospitable and hostile atmosphere without being put to use and is kept idle, its value would deteriorate and the subject lorry would be ruined over a period of time and the same will not be of any good either to the State or the petitioner. If the vehicle is released by imposing any reasonable conditions, the petitioner will put the vehicle to use by completing any legal formalities as may be necessary. Such a course

would be helpful in keeping the vehicle in good usable condition and would inure to the benefit of the ultimate successful party. Hence, it is in the interest of justice to give interim custody of the subject lorry to the petitioner herein; and, if the interim custody of the lorry is given to the petitioner, she is prepared to abide by any conditions that the Court may impose. The petitioner undertakes to abide by the conditions which this Court may impose in the interest of justice while ordering interim custody.'

5. *Per contra*, the learned Public Prosecutor would submit that in view of the crime registered and the illegal acts resorted to by the petitioner and others in obtaining the 'No Objection Certificates' for change of addresses by misrepresentation and suppression of facts, the order of the trial Court is sustainable and needs no interference.

6. Having regard to the submissions and without expressing any views on the merits of the main matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the subject lorry can be given to the petitioner after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers under Section 451 of the Code, wherever and whenever exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or any other public place or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to Sun, Rain and inclement/rough Weather without any protection would

lead to deterioration of its value and irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or in the yard of a Court House it is apposite to give interim custody of the vehicle to an eligible applicant as such a course helps in keeping the vehicle in the same good condition and inures for the benefit of the ultimate successful party. There are no compelling reasons, in the case on hand, to not to pass an order giving interim custody of the subject lorry to the petitioner.

7. Accordingly, the Criminal Revision Case is allowed and the order, dated 22.12.2016, of the learned V Metropolitan Magistrate, Anakapalle, Visakhapatnam District, passed in CrI.M.P.No.5438 of 2016 in Crime No.73 of 2016, is set aside. The learned V Metropolitan Magistrate, Anakapalle, Visakhapatnam District, is directed to give interim custody of the lorry bearing registration No.NL 02 N 5061, old registration No.AP 35 T 7941 to the petitioner forthwith on the petitioner executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties in a like sum each to the satisfaction of the learned Magistrate and on the petitioner further undertaking that she will not alienate or transfer the subject lorry in any manner and will maintain it in the same good and road worthy condition without changing any of its features and major parts and will not take it out of the territorial limits of the States of Telangana and Andhra Pradesh and would produce it along with its vehicular documents at a specified place or before a specified authority as and when directed by the Court concerned and would co-operate with the investigating agency during the course of investigation.

Pending miscellaneous petitions, if any, in this Criminal Revision Case, shall stand closed.

M. Seetharama Murthi, J

09th March, 2017

Note:-

Furnish C.C. by 13.03.2017

(B/O) Bv

