

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2552 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 Cr.P.C., is filed questioning the propriety and legality of the order, dated 12.09.2017, passed in CrI.M.P.No.3015 of 2017 in Crime No.257 of 2017 of Khajipeta Police Station, by the Judicial Magistrate of First Class, Mydukur, YSR Kadapa District.

2. The petitioner filed a petition under Sections 451 and 457 Cr.P.C., for release of Lorry bearing No.TN-41-AP-1899 for interim custody. It is alleged in the petition that he is owner of aforesaid lorry and the said vehicle is necessary for his livelihood and if the vehicle is exposed to sun and rain and kept idle, it would be damaged and requested to release the same.

3. The learned Assistant Public Prosecutor filed counter contending that the petitioner has been charged for the offence punishable under Sections 6 to 11 and 11 (1) (d) of the Prevention of Cruelty to Animals Act, 1960 (for short, 'the Act'); that the property claimed by the petitioner has been seized by police under suspicious circumstances; that as per the material collected by the Investigating Agency, the petitioner is transporting animals in a cruel manner without providing necessary amenities to them. It is further submitted that *prima facie* a case is made out against the petitioner and the police officials, who participated in the raid and the material collected during investigation is suffice to establish that the petitioner has committed the offence. He further submitted that the Division Bench of this Court in PIL No.206 of

2015 (**Animals Rescue organization and two others v. State of A.P.**.) directed all the prosecuting officers and the investigating officers to oppose the petitions filing for return of animals and vehicles following the Judgment of Apex Court in **State of Uttar Pradesh v. Musthakeen and others**¹ and prayed for dismissal of the petition.

4. The Judicial Magistrate of First Class, Mydukur, dismissed the petition basing on directions issued by this Court in PIL No.206 of 2015, which was in terms of the direction issued by the **Musthakeen's case** while adverting to the Judgment in **Sundarbhai Ambalal Desai v. State of Gujarath**².

5. The present revision is filed on the ground that the learned Magistrate has not considered the condition of the vehicle if the same is exposed to rain and sun and the same is kept idle, it will be damaged; and that the petitioner will sustain great loss and that the Court below passed a cryptic order without recording any reason.

6. Learned counsel for the petitioner contended that in view of catena of Judgments of the Apex Court, when a commercial vehicle is kept in the police custody for a very long period, it will be exposed to rain, it will become derelict and therefore the vehicle is liable to be released.

7. The learned Public Prosecutor opposed the petition on the ground that the vehicle in question was used for transportation of animals for slaughtering, the same shall not be released basing on

¹ CrI.A.Nos.283-287 of 2002

² (2002) 20 SCC 283

the guidelines issued by the Apex Court in **Musthakeen's case** referred supra.

8. The case of prosecution from the beginning is that the Lorry in question was used for transporting animals for slaughtering. The police after completion of investigation filed charge sheet before the Court. The petitioner filed a petition for release of said lorry, but, the trial Court dismissed the petition following the directions issued by this Court in PIL No.206 of 2015, wherein this Court issued certain directions to the prosecuting officers and investigating officers to follow the Judgment of the Apex Court in **Musthakeen's case** while deciding the applications of this nature. In the facts and circumstances of the case and following the Judgment of the Apex Court in **Musthakeen's case**, the vehicle i.e., lorry was found transporting animals for slaughtering and FIR was also registered against the petitioner with specific allegation that the petitioner was transporting animals for slaughtering by tying their necks together to each other tightly, which amounts to cruelty.

9. During pendency of case, an appeal was preferred against dismissal of the petition and this Court allowed application. Aggrieved by the said order, an appeal was preferred before the Hon'ble Apex Court and the Apex Court disposed of the Appeal with the following observation:

“We are shocked as to how such an order could be passed by the learned Judge of the High Court in view of the very allegations and in view of the charges, which the accused may face in the criminal trial. We, therefore, set aside the impugned order and direct that these animals be kept in the Goshala and the State Government undertakes

to take the entire responsibility of the preservation of those animals so long as the matter is under trial.”

10. In the present case, the petitioner only sought interim custody of lorry in question but not for release of animals. As per the guidelines issued by the Apex Court in **Musthakeen's case**, the relief sought for by learned counsel for the petitioner for release of lorry cannot be considered when serious allegations are made against the petitioner attracting the offences referred supra. Therefore, the order passed by the trial Court cannot be interfered with, but a direction can be issued to the trial Court to keep the vehicle in question in safe custody without exposing the same to sun and rain.

11. Accordingly, the Criminal Revision Case is dismissed, but directing the Court below to keep the vehicle in question in safe custody without exposing the same to sun and rain. However, the learned Judicial Magistrate of First Class, Mydukur, YSR Kadapa District, is directed to complete the entire trial, as expeditiously as possible, in any event not later than six months from today.

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

M. SATYANARAYANA MURTHY, J

OCTOBER 23, 2017

Note:

Issue C.C. in ten days.

(B/o)
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL REVISION CASE No.2552 of 2017

Date: 23.09.2017

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