

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1070 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the petitioner/ 3rd party is directed against the order, dated 15.11.2016, of the learned Judicial Magistrate of First Class, Tandur of Panga Reddy District, passed in CrI.M.P.no.393 of 2016 in C.C.No.40 of 2016.

2. I have heard the submissions of *Sri V.Brahmaiah Chowdary*, learned counsel appearing for the petitioner, and of the learned Public Prosecutor appearing for the 1st respondent-State of Telangana. I have perused the material record.

3. The petitioner/ 3rd party filed the aforesaid miscellaneous petition under Section 451 of the Code requesting to return to the petitioner, for interim custody, the case property, viz., *Ashok Leyland* Lorry bearing no. AP 29 U 6271, ('the lorry', for short). The trial Court, by the order impugned in this revision case, dismissed the petition of the petitioner. Therefore, the petitioner is before this Court.

4. The case of the petitioner and the submissions made on his behalf, are as follows:

The petitioner is the owner of the above said lorry, which is a goods carriage HM Vehicle. The said lorry was seized in the above said crime and was produced before the Court of the learned Judicial Magistrate of First Class, Tandur, along with CPR No.27 of 2016 and the vehicle is now in the safe custody of the Station House Officer, Karankote Police Station. The subject vehicle is required for the petitioner's business use. The petitioner is depending upon the income from the said lorry for his livelihood. Further, he

has to pay the loan amount to the Finance Company, which financed the purchase of the lorry under a hire-purchase contract. If the lorry is kept idle in an open place at the Police Station, it will be ruined due to exposure to Sun, Rain and bad Weather conditions and it will be spoiled beyond repair for want of proper care and protection and its value also deteriorates over a period of time. The lorry requires servicing at regular intervals and proper maintenance. The registration certificate issued by the Transport Department is also submitted to the Court. The petitioner is also ready to furnish sufficient sureties to the satisfaction of the Court and undertake to produce the vehicle as and when directed and abide by any conditions that may be imposed by the Court. Therefore, the order impugned may be set aside and the interim custody of the subject lorry may be granted to the petitioner in the interest of justice.

5. Learned Public Prosecutor while supporting the orders of the Court below and stated as follows: "The accused, who was said to be the driver of the lorry, appeared before the trial Court, on 07.11.2016, and stated that he purchased the said vehicle from one Sajid. The order of the trial Court discloses that the petitioner, Syed Taher, sold his lorry in favour of the accused by virtue of a Deed of Transfer of Rights, dated 03.10.2015. Hence, the trial Court rightly refused to grant interim custody of the lorry to the petitioner as he failed to prove that he is the owner of the lorry.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. According to the case of the prosecution, the subject lorry was involved in the subject crime and that the police intercepted it while sand was being transported in the said lorry. The lorry was seized and produced before the Court of the learned Magistrate. It is now in the custody of the police concerned, as per the orders of the learned Magistrate. The petitioner,

claiming to be the owner of the said lorry, sought interim custody of it *inter alia* stating that he is eking out his livelihood on the income he is deriving by plying the lorry and that the vehicle is purchased under a hire purchase contract and that he has to discharge the loan amount due and payable to the finance company and that if the vehicle is kept idle in an open place at the Police Station and if it is allowed to be exposed to Sun, Rain and bad Weather conditions, its value would deteriorate and it will be ruined over a period of time and that the vehicle needs regular servicing and maintenance and that if the vehicle is released to him, for interim custody, he would abide by the conditions that may be imposed by the Court and that he would maintain the vehicle in the same condition and produce it at any place as and when directed by the Court and that he is prepared to produce sufficient sureties to the satisfaction of the court. It is no doubt true that the powers under Sections 451 and 457 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. However, any vehicle has to be released for interim custody to a proper and eligible applicant. Therefore, it is necessary for the petitioner to establish *prima facie* that he is the owner and is eligible to have the interim custody of the lorry pending final disposal of the calendar case.

8. In the case on hand, the Court below considered the rival claim made by the petitioner and the accused and also the deed of transfer of rights, dated

03.10.2015, in respect of the subject lorry executed between the petitioner and the accused, which on a perusal discloses that the accused having paid Rs.1,50,000/- towards sale consideration, on 03.10.2015, purchased the same having further agreed to pay the amount due to the Financier, Shriram Transport Finance Company Limited, Raichur, Karnataka State, and that the transferor/petitioner agreed to execute necessary papers, which are required for transfer of ownership of the lorry in the name of the transferee/ accused after clearance of the finance amount. It is also stated in the said document that physical possession of the vehicle is already delivered on 03.10.2015 at 5 PM to the purchaser/ accused and that he is in possession and enjoyment of the said lorry. According to the case of the prosecution, the offence was committed on 05.10.2015, i.e., after execution of the above deed of transfer of rights between the petitioner on one hand and the accused on the other. In that view of the matter and in view of the rival claims made by the petitioner and the accused, the trial Court observed that there is a doubt about the ownership of the vehicle and hence, the petition is liable to be dismissed and accordingly dismissed the petition of the petitioner.

9. On the above analysis, this Court finds that the revision case is devoid of merit and is liable to be dismissed.

10. Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

14th June 2017
RAR