

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.4745 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C., seeking to set aside the order dated 23.03.2017 in CrI.M.P.No.788 of 2017 on the file of the Court of Judicial Magistrate of First Class, Devarakonda, arising out of Crime No.366 of 2016 on the file of the Station House Officer, Devarakonda Police Station, wherein and whereby the petition filed by the owner of nine male calves, under Section 457 of Cr.P.C., seeking interim custody of the calves, was dismissed.

2. Learned counsel for the petitioner submitted that the petitioner purchased the calves for agriculture purpose. He further submitted that the trial Court has not considered the material placed before it and dismissed the petition on erroneous grounds. He further submitted that the calves may be returned to the petitioner towards interim custody pending disposal of main case.

Per contra, learned Assistant Public Prosecutor for the State of Telangana, on instructions, submitted that the petitioner has purchased nine calves for agriculture purpose.

3. The case of the petitioner is that he has purchased nine male calves in Kacharajupalli village from the farmers by paying an amount of Rs.1,15,000/-. While the calves were being transported in a DCM Toyota van from Kacharajupalli village to the petitioner's native place, one Harish lodged a complaint to the police, who in turn registered a case against the driver of the DCM Van in Crime No.366 of 2016 under Sections 4, 5 and 6 of A.P. Prohibition of

Cow Slaughter and Animal Preservation Act, 1977 and Section 11(i)(A)(B)(H) of Prohibition of Cruelty to Animals Act, 1960.

4. The trial Court dismissed CrI.M.P. No.788 of 2017 basing on the decisions reported in **Laxmi Narain Modi v. Union of India**¹, wherein the Hon'ble Apex Court laid down guidelines to be followed by the concerned authorities at the time of transportation of the cattle from one place to another in order to prevent cruelty. The same principle was reiterated by this Court in PIL No.206 of 2015, dated 28.3.2016.

5. To substantiate the arguments, learned counsel for the petitioner has drawn the attention of this Court to the decision in **General Insurance Council v. State of Andhra Pradesh**² wherein it was held at para 3 as follows:

3. In *Sunderbhai Ambalal Desai v State of Gujarat*, (2002) 10 SCC 283, the Supreme Court was primarily dealing with provisions of Sections 451 and 457 of the Code. While quoting the aforesaid two provisions of the Act in the judgment, it was observed in para 7 as under:

“7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. I would serve various purposes, namely: 1. owner of the article would not suffer because of its remaining unused or by its misappropriation; 2. court or the police would not be required to keep the article in safe custody; 3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and 4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

To safeguard the interests of the prosecution, it was directed that following measures should be adopted giving instances contained in para 12 reproduced hereinbelow:

“12 For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after: (1) preparing detailed proper panchname of such articles; (2) taking photographs of such articles and a

¹ (2013) 10 SCC 227

² (2010) 6 SCC 768

bond that such articles would be produced if required at the time of trial; and (3) after taking proper security.

6. In **The State of Karnataka v. Subramanya Biliya Kodiya**

Mavinakurva³ the Karnataka High Court held at Para 5 as follows:

5. As regards the merit of the impugned order is concerned, the court below being convinced with a certificate produced by the second applicant issued by his employer Srikumar Roadlines and also daily enquiry report dated 14.11.2012 has inferred that he is an employee of the said Roadlines. Keeping open the question of the ownership of the seized property/cash amount in question the court below has ordered interim custody by taking the photographs of currency notes and also by calling upon the applicant to execute the indemnity bond of Rs.50,000/- with one surety for the like sum.

7. As per the principle enunciated in the cases referred supra, the Court can return the property to the owner for interim custody by imposing certain conditions.

8. It is not in dispute that the petitioner is not an accused in Crime No.366 of 2016. A perusal of the record clearly reveals that the petitioner herein purchased the calves for agriculture purpose. The learned Assistant Public Prosecutor, on instructions, submitted that the calves were purchased for agricultural purpose. A perusal of the record further reveals that the calves are aged about one or two years. A perusal of the record further reveals that the petitioner purchased nine calves by spending an amount of Rs.1,15,000/-.

9. At the time of arguments, learned counsel for the petitioner submitted that the calves were entrusted to Sahayob Goshala, Challur Village of Yadagirigutta Mandal in Yadadri District. If the calves are kept in Goshala till disposal of the case, it may cause untold hardship to the petitioner. On the other hand, if the calves

³ 2015 (3) LAWS 1 (Kar)

are returned unconditionally, it may cause some inconvenience to the prosecution. While deciding the petitions of this nature, the Court has to take into consideration the hardship likely to be caused to the petitioner.

10. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases 2 and 3 cited supra, I am of the considered view that it is a fit case to set aside the orders dated 23.3.2017 in CrI.M.P.No.788 of 2017.

11. In the result, the Criminal Petition is allowed setting aside the order dated 23.03.2017 in CrI.M.P.No.788 of 2017. Consequently, CrI.M.P.No.788 of 2017 on the file of the Court of Judicial Magistrate of First Class, Devarakonda is hereby allowed, directing the trial Court to hand over the calves, which are alive out of nine, to the petitioner, for interim custody on the following conditions:

1. The petitioner shall furnish a third party security to the tune of Rs.1,15,000/- to the satisfaction of the learned Judicial Magistrate of First Class, Devarakonda;
2. The petitioner is further directed to apply tags to each calf by the time of delivery;
3. The petitioner is further directed not to sell the calves till disposal of the main case;
4. In case of unforeseen death of any calves, the petitioner is further directed to intimate the same to the trial Court and also conduct postmortem examination and submit the report to the Court;
5. The petitioner is further directed to take the photographs of the calves at his own costs and file it before the court below;
6. The petitioner is further directed to produce the calves before the court below as and when required; and
7. The petitioner is further directed to produce his voter identity card or aadhar card before the court below.

Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date:11.07.2017
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