

HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL PETITION No.11739 OF 2011

ORDER:

This criminal petition is filed to quash the order dated 14.07.2010 in CrI.M.P.No.4057 of 2010 in Crime No.149 of 2009 in C.C.No.28 of 2010 passed by the Judicial Magistrate of First Class, Special Mobile Magistrate, Kakinada.

The brief facts of the case are that the petitioner is a financial institution registered with Reserve Bank of India and doing business of extending loans to its customers for purchase of commercial vehicles. The petitioner company has extended loan for purchase of a commercial vehicle, lorry bearing No.AP16X 0455. The customer, viz., Mr.Shaik Basha Jani has agreed to repay the entire loan amount in equated monthly instalments. But the customer has committed default continuously in payment of instalments and in the meanwhile, the vehicle was seized by the Port Police Station, Kakinada, and a case in Crime No.149 of 2009 was registered for transporting certain stolen goods illegally.

After seizure of the vehicle, the customer and the petitioner herein filed CrI.M.P.Nos.4195 of 2010 respectively before the Special Mobile Judicial First Class Magistrate, Kakinada. The learned Magistrate dismissed CrI.M.P.No.4195 of 2010 and allowed CrI.M.P.No.4057 of 2010 directing the petitioner to take custody of the vehicle by furnishing one surety and bank guarantee of Rs.3,00,000/- with further conditions not to alienate the vehicle and not to change the physical features of the same till the disposal of the criminal case.

The petitioner is unable to recover the instalments from the customer as he has stopped payment of instalments after the criminal

case was registered by the police. The petitioner further states that the vehicle is lying idle in the custody of the police station for the last one year three months and it is exposed to sun, rain and wind and therefore, sought permission for sale of the vehicle. Hence, this petition is filed seeking to quash the impugned order with a direction to the trial Court to give permission for sale of the vehicle by the petitioner.

Heard learned counsel for the petitioner and the learned Public Prosecutor.

Learned counsel for the petitioner submits that the trial Court has passed interim custody of the vehicle with a condition not to sell the same till the disposal of C.C. He further submits that the petitioner had taken custody of the subject vehicle after fulfilling the conditions imposed in the impugned order. Learned counsel placed reliance on the judgment of the Apex Court in *Sunderbhai Ambalal Desai and C.M.Mudaliar v. State of Gujarat*¹ wherein it is held in para Nos.4 and 12 that:

“451. Order for custody and disposal of property pending trial in certain cases:

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the property custody of such property pending the conclusion of the inquiry or trial and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.”

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 panchanama of such articles;
- 2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- 3) after taking proper security.”

Learned counsel for the petitioner submits that since the vehicle is being kept idle for the last one year three months, it is getting damaged, and that since the petitioner is a financial company, it wants to realize the

¹ AIR 2003 SC 638

amount by selling the vehicle as it is getting damaged day by day. Hence, the petitioner may be permitted to sell the vehicle after taking photographs of the vehicle.

Learned Public Prosecutor submits that the trial Court has passed a conditional order in CrI.M.P.No.4057 of 2010 not to alienate the vehicle till the disposal of the criminal case. If the vehicle is disposed of during pendency of the case, there is likelihood of disappearance of the evidence in the case.

As a matter of fact, the purport of Section 451 Cr.P.C. was only to the effect of return of the articles on furnishing a bond and to produce the article if required at the time of trial. Therefore, no permission can be granted for sale of the vehicle. However, considering the facts and circumstances of the case and as the C.C. is of the year, 2010, the trial Court is directed to dispose of the case within two months from the date of receipt of a copy of this order.

With the above observation, the Criminal Petition is disposed of.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDI SEVA SHYAM PRASAD, J

Date : 22.09.2017
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