

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case no.1323 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code') by the petitioner is directed against the docket order, dated 01.05.2017, of the learned XXI Metropolitan Magistrate, Cyberabad, Medchal, Ranga Reddy District passed in CrI.M.P.no.1177 of 2017 in C.C.no.355 of 2017.

2. I have heard the submissions of *Sri Mohd. Abdul Faheem*, learned counsel appearing for the petitioner, and of *Sri M.A.Shakeel*, learned counsel appearing for the 2nd respondent. I have also heard the submissions of the learned Public Prosecutor appearing for the 1st respondent, State of Telangana. I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows:

A case in Crime no.136 of 2017 was registered by the Station House Officer, Shamirpet Police Station, against the accused, Md. Ahmed Pasha, the 2nd respondent herein, for the offence punishable under Section 12 of the Prevention of Cruelty to Animals Act, 1960, ('the Act', for brevity). After investigation, a charge sheet is laid for the offence punishable under Section 11(d) of the Act. On the appearance of the accused, the learned Magistrate examined him under Section 251 of the Code. At the time of such examination, the accused appears to have pleaded guilty. Considering the voluntary 'plea of guilty' of the accused, the learned Magistrate convicted the accused under Section 241 of the Code; and, sentenced him to pay a fine of Rs.50/- for the said offence and directed that he shall undergo simple imprisonment for one week on failure to pay the said fine amount. Though, during the course of investigation, the vehicle and the cattle involved in the commission of the offence were seized, no order, as required under facts and in law, was passed

by the learned Magistrate with regard to disposal of the property. Be that as it may.

3.1 The petitioner, by claiming that he is the owner of the cattle, filed the afore-stated petition before the learned Magistrate for return/ delivery of the animals seized by the police during the course of investigation in the said case. The learned Magistrate dismissed the application on the ground that the petition is not maintainable as the period of time allowed for preferring the appeal is not yet over.

3.2 Aggrieved thereof, the petitioner filed the present revision.

4. At the time of hearing, learned counsel for the petitioner while stating the facts, which lead to filing of this revision case, has drawn the attention of this Court to the provision of Section 452 of the Code and contended that the offence which the accused is alleged to have committed is a non-cognizable offence according to Section 31 of the Act. He has also drawn the attention of this Court to Sections 11 and 29 of the Act and forcefully contended as follows: “Confiscation of the vehicle or the cattle can be ordered only on the second or subsequent conviction. There is no evidence in this case that the cattle are being transported for the purpose of slaughtering. The case is registered only under the provisions of Prevention of Cruelty to Animals Act, 1960. Even the charge sheet is filed for the offence punishable under the provisions of the said Act and not under the provisions of A.P. Cows Slaughter and Animals Preservation Act, 1977. Therefore, the trial Court ought not to have dismissed the petition and ought to have ordered return of the cattle involved in the case to the petitioner as he sufficiently established that he is the owner of the cattle.”

5. Learned Public Prosecutor submitted as follows: “The Court below ought to have passed an order for disposal of the case property while passing the judgment in the calendar case. However, the trial Court failed to do so. The petition filed by the petitioner seeking return of cattle was dismissed only

for the reason that appeal time is not yet over. The trial Court did not go into the merits of the matter. The claim with regard to ownership of the cattle made by the petitioner requires detailed examination by the Court below. Therefore, it is just and fair to direct the petitioner to approach the Court below once again.” Learned Public Prosecutor has drawn the attention of this Court to the seizure panchanama prepared during the course of investigation. A perusal of the said mediator’s report would disclose that the accused claimed that he purchased the cattle, hired the vehicle for transporting them, got the cattle loaded into the vehicle by keeping them one over the other and by tying them with ropes and that while he is transporting the cattle for being sold in Chengicherla market, the police intercepted the vehicle. Therefore, the learned Public Prosecutor points out that the accused also made a claim insofar as the cattle are concerned and that there is a rival claim in regard to the cattle. He further submits that a detailed hearing by the learned Magistrate is required in the matter before the request of the petitioner for return of the cattle is either considered or rejected.

6. I have given detailed and thoughtful consideration.

The order impugned verbatim reads as under:

“Heard complainant counsel. Perused the contents of petition. As appeal period is pending, this petition is not maintainable, hence petition is dismissed.”

The above order of the Court below discloses that the trial Court did not go into the merits of the matter and simply dismissed the petition as the time for preferring appeal is not yet over. The request for return of the cattle made by the petitioner requires detailed examination with regard to the ownership of the cattle. For that purpose, a detailed hearing is necessary in view of the rival claim said to have been made by the accused. Therefore, it is just and fair, in the considered view of the Court, to dispose of the revision case giving liberty to the petitioner to approach the trial Court and file a fresh application for consideration by it on merits.

7. In the result, the Criminal Revision Case is disposed of reserving liberty to the petitioner to approach the trial Court and file a fresh application seeking return of the subject cattle. It is needless to mention that if any such application comes to be filed, the trial Court shall dispose of the same in strict accordance with the procedure established by law, however, after giving notice and opportunity of hearing to all concerned.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

23rd June, 2017

Note:-
Issue CC by 24.06.2017
(B/o)
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