

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No1079 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the Code', for brevity), is filed by the petitioner assailing the order, dated 28.09.2016, of the learned Judicial Magistrate of First Class, Badvel, passed in CrI.M.P.No.6961 of 2016 (in Crime No.18 of 2016 on the file of Badvel Urban Police Station, Badvel).

2. I have heard the submissions of Sri L.J.Veera Reddy, learned counsel for the petitioner, and of the learned Public Prosecutor for the State of Andhra Pradesh representing the respondent. I have perused the material record.

3. The facts of the case, as borne out by the material record and as per the submissions made before this Court, in brief, are as follows:-

During the course of investigation in the above said crime, the police have seized in all 167 numbers of cell phones (mobile phones) under the cover of panchanama, dated 07.02.2016. According to the prosecution version, 77 cell phones are related to Crime No.18 of 2016 and the remaining cell phones are related to Crime No.17 of 2016. Crime No.18 of 2016 is registered against the accused therein for the offences punishable under Sections 457 and 380 of I.P.C. The present revision petitioner filed the aforestated miscellaneous petition before the learned Magistrate under Section 451 of the Code *inter alia* claiming ownership of 79 cell phones. The said application was resisted by filing a counter. On merits and by the order impugned in this Criminal Revision Case, the trial

Court dismissed the said application *inter alia* observing that neither the petitioner nor the accused Nos.3 to 6, who made rival claims, could establish ownership of 167 cell phones related to both the crimes. Aggrieved thereof, the petitioner is before this Court.

4. At the hearing, the learned counsel for the petitioner would submit as follows:-

‘The cell phones seized in Crime No.18 of 2016, for which the petitioner made a claim, are valuable property. In view of the technological advancements being made from day to day, the subject cell phones have to be sold in the open market before the cell phone models become out dated. Therefore, it is in the interests of justice to grant interim custody of the cell phones to the petitioner. If the cell phones are allowed to lie with the police or in the Property Room of the Court without granting interim custody, they may become useless over a period of time. The trial Court ought to have granted interim custody of the cell phones to the petitioner herein as prayed for. The order impugned, therefore, is unsustainable in the facts and circumstances.’

5. Per contra, the learned Public Prosecutor representing the respondent would submit as follows:-

‘There are rival claims. The claim of the petitioner herein in the present case is with regard to 79 cell phones, though only 77 cell phones are related to the present crime.’

6. In the facts and circumstances, the learned counsel for the petitioner makes a request to dispose of this Criminal Revision Case by setting aside the impugned order and giving liberty to the petitioner to

file a fresh application for seeking interim custody of the cell phones by giving details of the cell phones, crime wise, and by establishing his ownership, as such a course would meet the ends of justice.

7. Having regard to the facts and submissions, this Court is satisfied that this Criminal Revision Case can be disposed of with appropriate directions.

8. In the result, the Criminal Revision Case is disposed of setting aside the order impugned in the revision and reserving liberty to the petitioner to file fresh applications seeking interim custody of the cell phones in both the crimes, separately, giving all the details as may be necessary. It is needless to observe that if any such applications come to be filed by the petitioner, the trial Court shall issue notice to all concerned, including the accused in the crimes, and then pass appropriate orders, on merits and in strict accordance with the procedure established by law.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

M.Seetharama Murthi, J

13th June, 2017

Note:-

Furnish C.C. by 27.06.2017.

(B/O)

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