

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case Nos.855 & 858 of 2017

COMMON ORDER:

The genesis of these two revision cases, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code'), by the third party/ complainant is the common order, dated 23.12.2016, of the learned II Additional Judicial Magistrate of First Class, Kovur, West Godavari District, passed in CrI.M.P.Nos.3205 & 3317 of 2016 in Crime No.251 of 2016 of Devarapalli Police Station.

2. Heard *Sri B.S.N.Naidu*, learned counsel appearing for the 3rd party/ complainant, and of *Sri I.V.N.Raju*, learned counsel appearing for the 2nd respondent in both the revisions. I have perused the material record.

3. From the material on record and the submissions made by the learned counsel for both the sides, the following facts are discernable: The accused filed CrI.M.P.No.3317 of 2016 before the trial Court seeking interim custody of the Lorries bearing nos.AP37Y 8585 and AP37Y8586 (hereinafter, 'Lorries' for short) involved in the aforesaid crime registered for the offences punishable under Sections 447, 448, 379, 384 and 506(2) IPC against the said accused. The other petition in CrI.M.P.No.3205 of 2016 is filed by the 3rd party/ complainant seeking interim custody of the very same Lorries involved in the aforesaid crime. One party resisted the application of the other party. As already noted, the learned Judicial Magistrate of First Class, vide common orders, dismissed the MP filed by the accused and allowed the MP filed by the 3rd party/ complainant and granted interim custody of the Lorries to the third party. The operative portion of the common order of the learned Magistrate, verbatim, reads as under:

“In the result, the petition in CrI.M.P.No.3317/2016 is dismissed. The petition in CrI.M.P.No.3205/2016 is allowed.

- a) The *de facto*-complainant is directed to furnish security Rs.5,00,000/- per each Lorry with one surety for the like sum each.
- b) The *de facto*-complainant shall not sell or make any changes to the Lorries and he shall produce the lorries as and when directed by this Court.
- c) The Police are directed to take photographs before delivery of two lorries to the *de facto*-complainant and file them before the Court.”

However, by the common order, dated 16.03.2017, impugned in these revisions, the learned IX Additional Sessions Judge, West Godavari, at Kovvur, while allowing the criminal revision petition nos.123 & 124 of 2016 filed by the accused/ 2nd respondent herein, set aside the afore-stated common orders of the learned Additional Judicial Magistrate of First Class, Kovvur, and as a sequel allowed the MP filed by the accused and dismissed the MP filed by the 3rd party/petitioner herein. Hence, the 3rd party/petitioner is before this Court.

4. The 3rd party/ complainant is admittedly the registered owner of the two Lorries. The accused and the third party-complainant are brothers-in-law.

4.1 The contentions of the accused in support of his request for grant of interim custody of the Lorries, in brief, are as follows:

The accused is the Proprietor of M/s. Vijaya Lakshmi Granite Metal Suppliers, Gowripatnam; and, he is carrying on quarry business. He is the owner of the two Lorries. He is having custody of the records of the Lorries. He purchased the same from Chola Mandalam Finance & Investment and Tata Finance. He is running the vehicles; and, he is paying the instalments to the said companies besides road tax. Since the 3rd party is his brother-in-law, on humanitarian grounds, the accused allowed his said brother-in-law to join as a

Clerk in the business concern of the accused. Further, in view of the close relationship, the accused purchased the two Lorries in the name of the third party, his brother-in-law (hereinafter, '3rd party'). However, the accused has been paying the instalments to the Finance companies and also paying taxes and using the Lorries for his business. Subsequently, some disputes arose between the accused and the third party as the third party misappropriated an amount of about Rs.16,00,000/-. The matter was settled before the elders. The Lorries and the JD Machine are in the custody of the accused. Thereafter, the third party stopped working in the business concern of the accused. He did not repay the amount that was misappropriated. The accused several times asked the 3rd party, his brother-in-law, to transfer the Lorries in his name. The JD Machine is in a dilapidated condition since last three years and it was stationed at the stone crusher as it was not even fit for repairs. As the accused asked for transfer of the two Lorries in his name and to cause loss to the accused, the third party lodged a report with the police, as if the accused committed theft of the said Lorries. Admittedly, the Lorries are seized from the possession of the accused. This accused is having possession of the vehicular documents including the 'C' books and the receipts given by the Finance Companies for payments of instalments of the loan amounts. While so, on the Court referring the private complaint of the 3rd party, the crime was registered on 15.10.2016. On 18.10.2016, the SI of Police, without informing the accused took away the Lorries from the crusher, in the absence of the accused. As per the contents of the complaint of the 3rd party, on 25.09.2016, at about 9 PM, the accused along with five unknown persons criminally trespassed into the house of the complainant and within no time picked up the keys of the Lorries and of the JD machine hanging in the house of the complainant/ 3rd party and illegally took away all the three vehicles with the support of the people accompanying him. The JD machine is in dilapidated

non-running condition. Therefore, it is not possible to move it from the house of the 3rd party/ complainant as alleged. The 3rd party is not the owner of the vehicles and the vehicles were never in his custody or under his control. Taking advantage of the fact that the vehicles are registered in his name, with his criminal mind, he lodged a false complaint with untenable allegations. Mere registration of the vehicles in his name does not entitle the 3rd party to obtain custody of the vehicles. In the complaint of the 3rd party, the particulars of the vehicles like chassis numbers and engine numbers were not mentioned. But, surprisingly, after the police took custody of the vehicles, having obtained the particulars from the police station, the said details were mentioned in the petition filed by the 3rd party for custody of the vehicles. The averments in the complaint of the 3rd party are false. He falsely mentioned that all the original documents were kept in the safe box of the Lorries and the JD Machine. This accused is the absolute owner of the vehicles and the entire record of the vehicles is with him. The accused is eking out his livelihood by doing his business and the vehicles are required for his daily business. If the vehicles are kept idle in open place at the police station and are exposed to wind, rain and Sun, they get rusted and spoiled. The accused is prepared to offer sureties to the satisfaction of the Court and give an undertaking not to alter the physical features of the vehicles and to produce the vehicles as and when ordered. Hence, the interim custody of the vehicles may be given to the petitioner/ accused.

4.2 Per contra, the case of the 3rd party, who lodged the report against the accused, in brief, is this:

The 3rd party is doing quarry business. He is having the subject Lorries. The accused is his brother-in-law. He is also doing quarry business. Due to some disputes between them, the accused committed theft of his two Lorries and JD machine. Therefore, he gave a report to the police for taking action

against the accused. As the police did not take any action against the accused, he filed a private complaint. The learned Magistrate forwarded the complaint to the police. Thereafter, the subject crime was registered. During the course of investigation, the police seized the two Lorries from the custody of the accused, on 18.10.2016. The said vehicles are the only source of livelihood of this 3rd party. Without the Lorries, he cannot earn any income. In the absence of Lorries in his custody, he and his family members have to starve for food. The value of each vehicle may be about Rs.3,00,000/- . The vehicles are insured. All the originals were held up with the accused since the same were kept in the safe boxes of the Lorries and as they were taken away by the accused. The Lorries are admittedly registered in the name of this third party and he is the registered owner of the Lorries. Since he is the registered owner of the Lorries and that his case is that the accused committed theft of the lorries and as the Lorries were seized during the course of investigation into the crime registered against the accused and as the accused is not the registered owner of the lorries, this third party-complainant is alone entitled to have interim custody of the two lorries. He is prepared to give security as ordered by the Court and undertake to produce the vehicles as and when ordered by the Court. Hence, interim custody of the vehicles may be given to him.

5. Learned counsel for both the sides made submission in line with the respective contentions of the parties, which are stated supra. At the hearing, it is fairly stated that pursuant to the orders impugned in these revisions, the interim custody of the vehicles was already given to the accused.

6. Now, the only issue that arises for consideration in these revisions is as to who between the accused and the 3rd party is entitled to have interim custody of the Lorries/ vehicles.

7. As already noted, the learned Magistrate held that the registered owner, i.e., the 3rd party-complainant is entitled to have the custody of the lorries whereas the learned Additional District Judge held that the accused from whose possession the lorries were seized and who is having possession of the vehicular documents as well as receipts issued by the Finance Companies in token of payment of loan amounts is entitled to have the interim custody of the vehicle.

8. The following facts need reiteration. The accused and the 3rd party/complainant are brothers-in-law. The accused contends that he is doing quarry business and that his brother-in-law i.e., the 3rd party/complainant worked under him as a Clerk and that on humanitarian grounds, he allowed his brother-in-law to join as a Clerk in his business on account of the relationship and that during the course of the business some of the properties were kept in the name of the 3rd party/complainant and that some mining leases were also obtained in his name in fiduciary capacity and as a trustee and that the two Lorries were also purchased in the name of the 3rd party/complainant in a fiduciary capacity and as a trustee by obtaining loans from Chola Mandalam Investment and Finance Company Limited and Tata Motors Finance Limited under hypothecation agreements and that the accused purchased the Lorries and that he is the owner of the Lorries having custody of the Lorries as well as the vehicular documents and that he is paying road tax and installments towards loans to the Finance Companies. Per contra, the case of the 3rd party complainant is that he is the registered owner of the vehicles and that he has been doing quarry business by using the said Lorries and that the accused who is his brother-in-law is also doing quarry business and that due to disputes and differences between them, the accused committed theft of the two Lorries and therefore, the crime was registered and that the Lorries were seized from the

accused and that he being the owner as well as registered owner, he is entitled to the interim custody of the vehicles.

9. Be it first noted that the vehicles/ Lorries were admittedly seized from the possession of the accused. He is also having possession of the vehicular documents as on the date of the seizure of the Lorries. No doubt, the Lorries are registered in the name of the 3rd party complainant. In the complaint, the case of the 3rd party as regards the incident of theft is as follows: 'On 25.09.2016, at about 9 PM, the accused along with five unknown persons criminally trespassed into the house of the complainant/ 3rd party and suddenly made a big galata there and within no time, picked up the keys of the Lorries and of the JD machine hanging in the house of the complainant/ 3rd party intending to take away the same with a dishonest intention from out of the possession of the complainant/ 3rd party and that without his consent, the accused highhandedly and illegally took away the above said vehicles with the support of the people who accompanied him and that on the next day, he questioned the accused at his office and that at that time, the men of the accused surrounded him and that he was threatened by the accused with dire consequences and that he immediately rushed to the police station and lodged a report and marked copies of the same to the higher officials, on 30.09.2016, and that as the police people made him to go round the police station, he lodged a private complaint on 13.10.2016 before the Court.'

10. The claim of the 3rd party complainant for interim custody of the vehicles is based on the sole ground that he is the registered owner and that in the circumstances stated by him, the accused committed theft of the Lorries. However, the vehicular documents like RC books, and insurance policies of the vehicles including bunch of receipts showing payment of installments to the two Finance Companies were in the custody of the accused and he produced

the same before the trial Court. However, the 3rd party complainant explains in the miscellaneous petition filed by him for the custody of the Lorries that the documents were kept in the safe boxes of the Lorries and they were taken away by the accused. The Court below first noted that there were disputes between the parties, who were brothers-in-law since a long time. Before the Court below, the accused produced bunch of original transit forms given by the Department of Mines & Geology, Andhra Pradesh. One of such forms disclosed that on 29.09.2016, road metal was transported in one of the Lorries bearing no.AP37Y 8586 and that in the said document, the name of the consignee is the name of the business concern of the accused. Therefore, the Court below correctly observed in its common orders that the documents disclose that the said Lorry was in the possession of the accused even before the alleged incident of theft and, therefore, the allegation of commission of theft of Lorries by the accused, on 29.09.2016, is doubtful. It is also stated in the final report filed after investigation that the accused is not charged, as per the observations in the impugned order. In the said report, the police opined that the matter involved is purely of a civil nature. However, the 3rd party complainant stated before the Court below that he is taking steps to file a protest petition in due course. In the light of the undisputed facts, and on the above analysis, this Court finds that the common order passed by the learned IX Additional District & Sessions Judge, giving interim custody of the Lorries to the petitioner/ accused after imposing necessary conditions is sustainable under facts and in law and that the Court below need not be faulted for passing the impugned common order, which is justified, in the facts and circumstances of the case.

11. In the result, and for the reasons assigned supra, this Court finds that the contentions of the revision petitioner are devoid of merit and that there is

no merit in these revision cases, and therefore, the orders impugned do not warrant interference.

12. In the result, both the Criminal Revision Cases are dismissed.

Pending miscellaneous petitions, if any, shall stand closed.

19th September, 2017
RAR

M. SEETHARAMA MURTI, J

