

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3242 OF 2017

ORDER:

The present petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the Condition (i) of Paragraph-7 of the Order dated 10.3.2017, in Criminal M.P. No.645 of 2017 in C.C. No.268 of 2016 on the file of Special Mobile Judicial Magistrate of First Class, Kakinada.

2. The petitioner is the *de facto* complainant. He is the owner of the subject property, which is Barge Flat Top Barge, KKD-29. He filed the complaint against the 3rd respondent – Kolli Koteswara Rao - for deceitful cheating in handing over the flat property pursuant to the Agreement dated 11.1.2016. The petitioner is the Managing Director of M/s. Dhanalaxmi Marines, Kakinada, which is a partnership firm registered with Port Officer, Kakinada. He has also entered into agreement with one Kolli Koteswara Rao (2nd respondent in CrI.M.P. No.645/2017) on 11.1.2016 on a monthly rent of Rs.8,50,000/- and handedover the Barge to him, but, on completion of agreement period the 2nd respondent did not handover the Barge and did not pay the rent to him and the Barge is not self-propelled and it is not movable as it would be floating in the sea water. According to the petitioner, on his complaint, the Station House Officer, Port Police Station, Kakinada, during investigation seized the said Barge at fishing harbour, Visakhapatnam Port Trust and since the Barge is stationed in the Sea

at Visakhapatnam, he is sustaining loss for keeping the Barge at Visakhapatnam idle, and, therefore, sought for interim custody to take physical possession of the Barge Flat Top Barge KKD-29 at Passenger Jetty, Slip Way Complex, Fishing Harbour, Visakhapatnam Port Trust.

3. Making a request, he filed Criminal M.P.No.645 of 2017 in C.C. No.268 of 2016. The learned Magistrate noting that there is no dispute with regard to ownership of the subject property and verifying the xerox copies of registration of firm, C-Book of the said Barge and Work Order Letter, opining that no purpose would be served in keeping the property in Sea water idle at fishing harbour, Visakhapatnam Port Trust, and, though no prejudice would be caused to the prosecution or accused if the said Barge is given for interim custody to the petitioner/*de facto* complainant, allowed the petition imposing the following conditions.

“(i) The above said property i.e., Barge Flat Top Barge, Kakinada-29 ordered to give interim custody to the petitioner/owner by name M/s. Dhanalaxmi Marine, Kakinada, rep. by Managing Director, Sri Vanamadi Peda Dharmarao, S/o. Narayana Murthy, age 52 years, Caste-Agnikula Kshatriya, Door No.47-7-60, Yetimoga, Jagannaickpur, Kakinada for his interim custody on executing a Bank Guarantee for Rs.75,00,000/- (Rupees Seventy five lakhs only) on any Nationalized Bank in the name of this Court with one surety for the like sum.

(ii) The petitioner/owner of the said property is further directed not to alter or change the shape, not to pledge, transfer or alienate the above said barge till further orders of this Court.”

4. The learned Magistrate has also taken care to see that the property was properly handed over in accordance with law in the

presence of mediators under a panchanama and to obtain release permission from the Commissioner, Visakhapatnam Port Trust.

5. Now, the challenge is in regard to the Condition (i), on the main ground that when the Court accepted that he is the owner of the Barge, the Court ought not to have imposed condition of executing Bank Guarantee for Rs.75,00,000/- in any Nationalized Bank with one surety for a like sum. The learned Magistrate observed in paragraph-6 thus:

“6. There is no dispute with regard to ownership of the said property and they filed Xerox copies of registration of firm, C-Book of said barge and work order letter.”

However, subject property is given towards interim custody, but, it is a final order. In such an event, certainly, the learned Magistrate is competent to impose conditions and in that direction imposed the first condition requiring the petitioner to execute Bank Guarantee for Rs.75,00,000/- with one surety for the like sum. But, the question is whether imposition of such a condition is arbitrary or judicious. Certainly, imposing condition to execute Bank Guarantee for a sum of Rs.75,00,000/- with one surety for the like sum is onerous or arduous, more particularly, when the Court recorded a positive finding that the ownership of the said property vests in the complainant. Therefore, it is a desirable case to reduce the amount of Bank Guarantee and it would be reasonable to direct the petitioner to execute a Bank Guarantee for a sum of Rs.25,00,000/- (Rupees Twenty five lakhs

only) on a Nationalized Bank in the name of the Court to the credit of the Calendar Case No.268 of 2016.

6. So far as the other direction that the petitioner shall also furnish one surety for the like sum is concerned, the same is quashed.

7. Thus, the first condition is modified to the extent indicated above and the remaining terms mentioned in Condition (ii) in paragraph-7 of the order are undisturbed.

8. Accordingly, the Criminal Petition is disposed of.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Petition shall stand closed.

Date:05.06.2017.

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A.SHANKAR NARAYANA

