

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1136 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/ A-2, having been aggrieved of the order, dated 21.03.2017, passed by the learned Judicial Magistrate of First Class, Badvel, in CrI.M.P.No.2146 of 2017 in Crime No.14 of 2017.

2. I have heard the submissions of *Sri P. Nagendra Reddy*, learned counsel appearing for the petitioner-A2, and of the learned Public Prosecutor appearing for the respondent-State of Andhra Pradesh. I have perused the material record.

3. The facts of the case, which are necessary to be stated as a preface to this order, in brief, are as follows:

The petitioner is the 2nd accused in Crime No.14 of 2017 on the file of Porumamilla P.S. According to the prosecution case, Ashok Leyland Lorry bearing registration no. AP 04 X 2564, (hereinafter, 'the Lorry') was seized, on 09.02.2017, when it was illegally transporting sand and that the said Lorry was produced before the Court of the learned Magistrate and is presently in the custody of the Court. While so, the petitioner-A2 claiming, *inter alia*, that he is the owner of the said Lorry filed the afore-mentioned Miscellaneous Petition seeking interim custody of the Lorry. According to the case of the petitioner, the Lorry is now kept in the open place near the Police Station and is being exposed to sun and rain and inclement weather conditions and, therefore, its value is getting deteriorated and that there is a likelihood of the Lorry being spoiled if it is left exposed like that in a place open to sky near the Police Station. The petitioner further stated that he is prepared to furnish any undertaking and security as directed by the Court in case the

vehicle is given to him for interim custody. However, the trial Court dismissed the petition on the ground that the offence is a second offence and that the petitioner is habituated to commit theft of sand. Aggrieved thereof, the petitioner is before this Court.

4. Learned counsel for the petitioner while reiterating the case of the petitioner, which is already stated supra, and while bringing to the notice of this Court, G.O.Ms.No.95, dated 28.08.2014, would submit that if any vehicle like a Lorry is found involved, a second time, in illegal extraction and transportation of sand, the competent authority is empowered to levy penalty of Rs.75,000/- and order release of the vehicle but, the vehicle cannot be refused to be granted interim custody in view of the terms of the said G.O.

5. Learned Public Prosecutor filed counter, *inter alia*, stating the chronology of events, which lead to the seizure of the Lorry, and that the offence is a second offence and that if the Lorry is released, the petitioner may use the same for repeating a similar offence.

6. I have given detailed and thoughtful consideration to the facts and submissions.

7. Having regard to the submissions and without expressing any views on the merits of the matter, this Court, at this stage, is satisfied that in the facts and circumstances of the case, the interim custody of the Lorry can be given to the petitioner-A2 after imposing necessary conditions as release of the seized vehicles by the Magistrates or the authority concerned is a rule and the rejection is an exception. Powers under Section 451 of the Code, wherever and whenever exercisable, are to be properly and promptly exercised to see that vehicles are not kept for a long time, that is, for more than fifteen days to one month at the police station or the Court house, in any case. Keeping any vehicle idle in an open place exposing it to Sun, Rain and inclement/ rough Weather without any protection would lead to deterioration of its value and

irreparable damage. Instead of allowing a vehicle to lie idle and rot in front of a police station or in the yard of a Court House it is apposite to give interim custody of the vehicle to an eligible applicant as such a course helps not only in keeping the vehicle in the same good condition but also inures for the benefit of the ultimate successful party. There are no compelling reasons, in the case on hand, to not to pass an order giving interim custody of the Lorry to the petitioner.

8. Accordingly, the Criminal Revision Case is allowed and the learned Judicial Magistrate of First Class, Badvel, is directed to give interim custody of the Lorry bearing registration No. AP 04 X 2564 to the petitioner through the Station House Officer, Porumamilla Police Station, on the petitioner executing a personal bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties for a sum of Rs.3,50,000/- each to the satisfaction of the learned Judicial Magistrate of First Class, Badvel, and on the petitioner further undertaking that he will not alienate or transfer the Lorry in any manner and will maintain it in the same good and road worthy condition without changing any of its features and major parts and will not take it out of the territorial limits of the States of Telangana and Andhra Pradesh and would produce it along with its vehicular documents at a specified place or before a specified authority as and when directed by the Court and would co-operate with the investigating agency during the course of investigation. It is made clear that this order shall not preclude the authority concerned from imposing penalty as per the terms of the relevant GO provided in the discretion of the said Officer imposing of such penalty is just and necessary in the facts and circumstances of the case.

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

20th June, 2017
Vjl

M. Seetharama Murthi, J