

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.2075 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the petitioner/ accused is directed against the order, dated 03.07.2017, of the learned Judicial Magistrate of First Class, Markapur, passed in CrI.MP.No.5859 of 2017 in Crime No.88 of 2017 of Markapur Town Police Station.

1.1 By the said order, the learned Magistrate dismissed the afore-stated Miscellaneous Petition filed by the petitioner-accused under Section 457(1) of the Code requesting to grant interim custody of the lorry bearing registration No.AP 16 TY 0589 (Ten Tyre Lorry) involved and seized in the above crime.

2. I have heard the submissions of Sri Nimmagadda Satyanarayana, learned counsel appearing for the petitioner-accused and of the learned Public Prosecutor (AP) representing the respondent-State. I have perused the material record.

3. The facts of the case, in brief, are as follows:

On a report received from Narssimhulu Kunduru/ informant, the afore-stated crime was registered on 31.05.2017 against the driver of the above said Lorry bearing registration No.AP 16 TY 0589 for the offence punishable under Section 304-II of the IPC. It is alleged in the report of the informant as follows:

- 'The deceased, who is son of the informant, was returning, at about 06:00 PM on 31.05.2017, on a bicycle from the water servicing point. The petitioner/ accused knowing fully well that it is a mud road and that a lorry cannot proceed from that narrow mud road and that if the lorry proceeds ahead it will hit the cycle, yet intentionally and negligently drove the said vehicle ahead and dashed against the bicycle of the deceased coming from the

opposite direction. On the deceased falling down from his cycle, the tyres of the lorry ran over the deceased and the deceased succumbed to the injuries sustained in the accident, on the spot. Having come to know of the incident he/ informant went to the scene and then lodged the report.' The investigation into the crime is in progress.

4. The case of the petitioner-accused in support of his request for granting interim custody of the lorry, in brief is this:

The income from the vehicle is his only source of livelihood. He is the driver-cum-owner of the vehicle. He took the vehicle under hire purchase by availing loan from Cholamandalam Finance Limited, Chennai. He is required to pay Rs.38,880/- per month towards equated monthly installments. After the vehicle was seized in the above crime, it was kept in an open place by exposing it to Sun and rain. If the interim custody of the vehicle is not given to the petitioner, it will get damaged due to rusting; and, the engine also will be spoiled if it is not put to regular use and the petitioner would be put to hardship. The court below rejected the request of the petitioner only on the ground that the crime is registered for the offence punishable under Section 340-II IPC and that the offence is exclusively triable by a Court of Session. The learned Magistrate has power to release the vehicle to the eligible owner on production of necessary documents and after imposing necessary conditions. Entire investigation is completed and the formality of filing charge sheet only remained. On account of the detaining of the lorry without granting interim custody, the petitioner is being deprived of his livelihood and income and is likely to face recovery proceedings from the financier. In-fact the ingredients of Section 304-II IPC are not attracted to the case on hand. However, the police for the reasons best known to them included the said section of law in the case. The release of the vehicle to the petitioner is necessary to maintain it in the same good condition and the petitioner is prepared to abide by any

conditions that may be imposed while ordering interim custody of the vehicle to him and is also prepared to produce it as and when directed by the Court. The learned Magistrate is in error in dismissing the petition without considering the facts and circumstances of the case and the claim of the petitioner who is admittedly the owner of the vehicle even according to the undisputed case facts.

5. Learned Public Prosecutor submitted that charge sheet is not yet filed.

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-accused 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 Sections 451 and 457 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 any other public place 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 the applicant without prejudice to the contentions of the both the parties concerned, as such a course helps in keeping the vehicle in the same good condition and inures for the benefit of the ultimate successful party.

8. Accordingly, the Criminal Revision Case is allowed and the order, dated 03.07.2017, of the learned Judicial Magistrate of First Class, Markapur, passed in CrI.M.P.no.5859 of 2017 in Cr.No.88 of 2017 of Markapur Town Police Station is set aside. As a sequel, the said learned Magistrate is directed to give interim custody of the Lorry bearing No.AP 16 TY 0589 to the petitioner on the petitioner executing a personal bond for a sum of Rs.4,00,000/- [Rupees Four Lakhs only] with two sureties in a like sum each to the satisfaction of the said learned Magistrate and on the petitioner further undertaking that he will not dispute the identity of the vehicle during trial and alienate or transfer the said vehicle in any manner and will maintain it in the same good and road worthy condition without changing any of its features including its colour 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 concerned. Before giving interim custody of the said vehicle to the petitioner-accused, as per the orders of this Court, the learned Magistrate shall direct the police officer concerned to arrange to take about four or five photographs of the vehicle from different angles and preserve them as a part of the record of the crime.

Pending miscellaneous petitions, if any, in this Criminal Revision Case, shall stand closed.

M. SEETHARAMA MURTI, J

24.07.2017
Vjl