

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.2061 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/ owner is directed against the order, dated 03.07.2017, of the learned Judicial Magistrate of First Class, Markapur, passed in CrI.MP.No.5853 of 2017 in Crime No.36 of 2017 of Dornal Police Station.

1.1 By the said order, the learned Magistrate dismissed the afore-stated Miscellaneous Petition filed by the petitioner-owner under Section 457(1) of the Code requesting to grant interim custody of the water tanker vehicle (tractor) bearing No.AP 27 AX 7638 involved and seized in the above crime.

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

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

On 31.05.2017 at about 09:40 hours., the deceased, on his personal work, left his house on a TVS XL 100 (without number plate) to go to Bommalapuram village. On the way, when his vehicle reached a place near Narayana Reddy's field, the petitioner-accused while turning his water tanker vehicle (tractor) bearing No.AP 27 AX 7638 drove it at high speed and in a rash and negligent manner without observing the movement of the traffic on both sides of the road and dashed against the said TVS vehicle of the deceased and as a result, the deceased died on the spot on account of the injuries sustained in the said accident. On a report by the son of the deceased, the afore-sated crime was registered against the accused-driver for the offence punishable

under Section 304-II of IPC and other penal provisions under the Motor Vehicles Act.

4. The case of the petitioner-owner in support of his request for granting interim custody of the water tanker vehicle, in brief is this:

The petitioner is the owner of the water tanker vehicle involved in the afore-said crime. The income from the vehicle is his only source of livelihood for him and his family and he and his family are depending upon the income from the said vehicle. After its seizure in the above said crime, it is kept in front of Dornol Police Station 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 against the accused-driver 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 water tanker vehicle without granting interim custody, the petitioner is being deprived of his livelihood and income. 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 Water tanker vehicle 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.5853 of 2017 in Cr.No.36 of 2017 of Dornal Police Station is set aside. As a sequel, the said learned Magistrate is directed to give interim custody of the Water tanker vehicle bearing No.AP 27 AX 7638 to the petitioner on the petitioner executing a personal bond for a sum of Rs.4,00,000/- [Rupees Four Lakhs only] with one surety in a like sum to the satisfaction of the said

learned Magistrate and on the petitioner further undertaking that he will not 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-owner, 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.

24.07.2017
Vjl



M. SEETHARAMA MURTI, J