

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1165 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/ 3rd party is directed against the order, dated 16.03.2017, of the learned I Additional Special Judge for trial of SPE & ACB Cases-cum- V Additional Chief Judge, City Civil Courts, Hyderabad, passed in Cr.I.M.P.no.992 of 2016 in Cr.No.7/ ACB.NLG/ 2016.

2. I have heard the submissions of *Sri K. Lakshman*, learned counsel appearing for the petitioner, and of the learned Special Public Prosecutor appearing for the 1st respondent-State. The second respondent is the accused officer. I have perused the material record.

3. The petitioner/ 3rd party filed the aforesaid miscellaneous petition under Section 451 of the Code requesting to release to the petitioner, for interim custody, the Innova vehicle bearing no. AP 24 TA 7828, which was seized by the ACB officials during the course of investigation. The said application was resisted by the prosecution. The trial Court, by the order impugned in this revision case, dismissed the petition of the petitioner. Therefore, the petitioner is before this Court.

4. The case of the petitioner and the submissions made on his behalf, are as follows:

The petitioner is the owner of the above said Innova vehicle bearing number AP 24 TA 7828 ('vehicle', for short). He has given it on hire, on a consolidated payment of Rs.24,000/- per month, for the period from 01.04.2016 to 31.03.2017, under an agreement, to the Deputy Commercial Tax Office, Nalgonda, for official use of the Deputy Commercial Tax Officer

(hereinafter, 'DCTO'). On 10.08.2016, while the DCTO was returning to his house on the said vehicle, the same was intercepted by the ACB officials and was detained and seized by the said officials. The certificate registration of the vehicle in the name of the petitioner is filed before the trial Court. At the time of purchase of vehicle he was residing at Nalgonda. He is presently residing at Hyderabad. He raised certain loan from friends and relatives for purchasing the said vehicle and he is obliged to discharge the said loans. In the circumstances, it is becoming a financial burden. The petitioner has to meet the outstanding amounts and the payment of salary of the driver. If the vehicle is kept idle it will develop mechanical problems and it will cause further financial burden to the petitioner. The petitioner is prepared to abide by any conditions that may be imposed by the Court. The trial Court dismissed the application of the petitioner only on the ground that the investigation was in progress by then. The investigation is completed. The petitioner also produced vehicular documents. Therefore, the order impugned may be set aside and the interim custody of the vehicle may be granted to the petitioner in the interest of justice.

5. Learned Public Prosecutor while supporting the orders of the Court submitted as follows: "In the trial Court a counter is filed stating that the investigating officer objects for the release of the vehicle to the petitioner. In the statement made to the ACB officials, the petitioner stated that the accused officer engaged the services of the petitioner as a computer operator on the request of his grand mother, who was employed in Vigilance office, and that since then he was being paid Rs.7,000/- per month and that the accused officer purchased the vehicle in his (petitioner's) name and then taken him as a driver and is paying a salary of Rs.10,000/- from officer's pocket. Since the petitioner is a name lender as per the statement made during investigation and as the vehicle was purchased benami or nominally in the name of the petitioner, he is not entitled to seek release/ interim custody of the vehicle."

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

7. According to the case of the prosecution, while the DCTO was returning to his house on the subject vehicle, the same was intercepted by the ACB officials and was detained and seized by the said officials. It is now in their custody and is lying at their office premises. Basing on the statement said to have been given by the petitioner and the investigation done, the prosecution contends that the vehicle was purchased by the accused officer in the name of the petitioner. Nevertheless, the petitioner claims that he is the owner of the vehicle and that he has given it on hire, on a consolidated payment of Rs.24,000/- per month, for the period from 01.04.2016 to 31.03.2017, under an agreement, to the Deputy Commercial Tax Office, Nalgonda, for official use of the Deputy Commercial Tax Officer. The vehicular documents are of course are in the name of the petitioner. The truthful nature of the two rival versions has to be adjudged after regular trial. 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, where ever 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 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. While releasing a vehicle and granting interim custody subject to conditions, there is no need to make a roving enquiry and record any findings which will have a bearing on the issues involved in the main case. Granting of interim custody of a vehicle is always without prejudice to the contentions of both the parties and the interim custody does not confer any additional rights and such custody is always subject to the result of the final verdict in the case.

9. Accordingly, the Criminal Revision Case is allowed and the order, dated 16.03.2017, of the learned I Additional Special Judge For trial of SPE & ACB Cases-cum- V Additional Chief Judge, City Civil Courts, Hyderabad, passed in Crl.M.P.no.992 of 2016 in Cr.No.7/ ACB.NLG/ 2016 is set aside. The said learned Judge is directed to give interim custody of the Innova vehicle bearing no. AP 24 TA 7828 to the petitioner on the petitioner executing a personal bond for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) with two sureties in a like sum each to the satisfaction of the said learned Judge 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 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.

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

M. SEETHARAMA MURTI, J

14th June 2017
Vjl