

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.936 of 2017

ORDER :

Aggrieved by the order dated 20.12.2016 in CrI.MP.No.2054 of 2016 in Crime No.158 of 2016 passed by the Judicial First Class Magistrate, Tekkali, the revision is filed by the petitioner/ owner.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the State.

3. The said CrI.MP. is filed under Section 451 Cr.P.C. seeking interim custody of the i phone 6564 GB CR 120 and Renault Duster RXL DCI Motor Car bearing No.AP 31 CP 9909, which were seized in Crime No.158 of 2016 of Tekkali Police Station, at the time of arrest of A10 from the so called disclosure statement of him leading to discovery of the facts in seizure of the said property. It is the claim for interim custody saying those without utility being damaged from dis-use and the petitioner is the owner and wife of A10. The learned Magistrate dismissed the same holding that investigation is in initial stage. It is impugning the said order, revision is maintained.

4. Heard the learned counsel for the petitioner and also the learned Public Prosecutor representing the State.

5. The i phone 6564 GB CR 120 is concerned, from the disclosure by A10 leading to discovery of facts and cell phone contained the information and in committing the crime, the cell phone used by

making calls, that is also a valuable electronic evidence of the crime showing complicity of A10 and other accused including the petitioner, wife of A10 if any, for the investigation is still in progress, not entitled to the interim custody, as rightly concluded by the trial Court and by preserving the cell phone and the information therein, it will no way be damaged much less lost its utility as also from the fact that under Section 65(B)(4) of the Indian Evidence Act, unless the original evidence is as primary evidence adduced; once cell phone is returned by retrieving the information by any copy, a certificate is required, though for the primary evidence, such a bar is not there. Thereby also, the original cell phone and information is required to be preserved till the end of trial, as such, not entitled to the cell phone.

6. So far as the Renault Duster RXL DCI Motor Car bearing No.AP 31 CP 9909 is concerned, as most of the parts are made up of iron and if not in use, not only the tyres but also the frame and other valuable parts including engine will be damaged by non-using in the course of time and becomes junk, as also held by the expression of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*¹, this Court feels it just even the vehicle is required to be proved in the course of evidence, to return for interim custody as custodian to make use of the vehicle only, as it is in condition without any right of alienation, without any right of transfer, causing any damage to the utility much less replacement of any parts or engine, subject to condition of execution of self-bond with immovable

¹ (2002) 10 SCC 290

property security by deposit of title deeds confirming the same by executing on Rs.100/- stamp paper to that effect with an undertaking also or bank guarantee for Rs.10,00,000/- (Rupees Ten lakhs only), to produce the vehicle as and when required and in the event of failure to produce besides without prejudice to the power of the Court to take coercive steps to secure back vehicle, forfeit the said amount or property value in full or part of it as penalty using Section 53 I.P.C. Needless to say, while returning the vehicle, subject to the above compliance, it shall be covered by a panchnama including by video and photo coverage with participation by accused and signatures on the same that to be admitted in evidence during trial, if at all, the vehicle could not be secured for any reason. Needless to say further that the trial Court shall intimate to the R.T.A. Authorities concerned not to effect any transfer in any manner and endorse the same in the original C-book by preserving the original C-Book with the trial Court by permitting copies of it to be used.

7. Accordingly and with the above observations, the Criminal Revision Case is allowed in part directing the lower Court on compliance of the above said conditions, to release the vehicle.

8. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:04-04-2017
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