

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.2094 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/A1 is directed against the order, dated 13.06.2017, of the learned Principal Junior Civil Judge, Srikakulam, holding Full Additional Charge of the Post of Judicial Magistrate of First Class, Srikakulam, passed in CrI.MP.No.511 of 2017 in Crime No.38 of 2017 of Laveru Police Station.

1.1 By the said order, the learned Magistrate dismissed the afore-stated Miscellaneous Petition of the petitioner-A1 filed under Section 457(1) of the Code requesting to grant interim custody of the lorry bearing registration No.RJ-05-GB-2186.

2. I have heard the submissions of Sri Muralidhar Patnaik K.V, learned counsel appearing for the petitioner-A1 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 Gandepalli Ravikumar, son of the deceased- Gandepalli Trinadharao, the afore-stated crime was registered, on 17.05.2017, against the petitioner-A1, who is the driver of the above said Lorry, and another, who is said to be the helper, for the offence punishable under Section 304-II of the IPC. The case of the prosecution as could be seen from the remand report, in brief, is as follows: - 'On 07.05.2017, the deceased after having lunch at the marriage function of Yennti Satyam, left Bejjipuram village for Mettikkivalasa village on his TVS XL Motor Cycle. The petitioner-A1, driver-owner of the Lorry bearing registration No.RJ-05-GB-2186, which is transporting burnt powder (Dolomite) from Srivalli Shipping and Transport Private Limited,

Visakhapatnam, to Jaipur of Odisha State, allowed his helper, Samai Singh-A2, who is not having a license, to drive the said lorry. A2, knowing fully well that he is unlicensed and anybody can die if he dashes, drove the said Lorry in a rash and negligent manner and dashed against the deceased and ran over him from his rear side, when the deceased was crossing National High Way at Bejjipuram road junction. As a result, the deceased died on the spot. A2 proceeded ahead without stopping the Lorry. LW2 who witnessed the ghastly incident from a RTC bus took initiative and stopped the Lorry near Budumuru village, and caught hold of A2 and handed over him to the complainant, who in turn handed over him to the police after ascertaining his identity. A1 managed to escape. On 18.05.2017, the Inspector of Police, JR Puram arrested A1 on his surrender. He also seized the records of the Lorry including bill of lading, under a cover of seizure report. The investigation into the crime is in progress.'

4. The case of the petitioner-A1 in support of his request for granting interim custody of the lorry, in brief is this:

The income from the Lorry is his only source of livelihood. He is the driver-cum-owner of the vehicle. He is carrying on business of transporting burnt powder (Dolomite) from Srivalli Shipping and Transport Private Limited, Visakhapatnam to Jaipur of Odisha State. The vehicle was taken possession along with the load of burnt powder. It is now in the custody of the police. It is now kept in an open place and is being exposed to Sun and rain. The customer, Srivalli Shipping and Transport Private Limited, Visakhapatnam, is demanding the petitioner to deliver the burnt power immediately. If the interim custody of the vehicle is not given to the petitioner, the burnt power in the vehicle will be spoiled; and, the vehicle will also 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. 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 erred 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, along with the load of Burnt Powder, can be given to the petitioner-A1 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 13.06.2017, of the learned Principal Junior Civil Judge, Srikakulam, holding Full Additional Charge of the post of Judicial Magistrate of First Class, Srikakulam, passed in CrI.M.P.no.511 of 2017 in Cr.No.38 of 2017 of Laveru Police Station is set aside. As a sequel, the learned Magistrate concerned is directed to give interim custody of the Lorry bearing No.RJ-05-GB-2186 to the petitioner-A-1 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 without the permission of the Court 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-A1, 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

25.07.2017

Note: Issue CC today.

(B/ o)

Vjl

