

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.4580 OF 2017

ORDER:

1 This petition is filed under Section 482 Cr.P.C to quash the order dated 26.10.2016 passed in CrI.M.P.No.393 of 2016 in Cr.No.18 of 2016 passed by the learned Judicial Magistrate of I Class, Atmakur.

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

3 A perusal of the record reveals that the petitioner herein is A.2 in Cr.No.18 of 2016 on the file of Station House Officer, Narva Police Station, Mahaboobnagar District registered for the offences punishable under Sections 25, 27 and 30 of Indian Arms Act, 1959 r/w Section 2 (14) (16) (35) (36), Section 9 and Section 50 r/w 51 (1) of Wildlife Protection Act, 1972.

4 After completion of investigation, the Investigating officer laid charge sheet. The petitioner herein filed CrI.M.P.No.393 of 2016 in Cr.No.18 of 2016 under Section 451 of Cr.P.C. for return of the cash seized from him as interim custody. The trial Court dismissed the said petition. Hence the present petition.

5 The learned counsel for the petitioner submitted that the trial Court has erroneously dismissed the petition. He has drawn attention of this court to the following judgments:

General Insurance Council and Ors. vs. State of Andhra Pradesh and Ors.¹ Wherein the Hon'ble apex Court

held at para No.3 as follows:

5. In *Sunderbhai Ambalal Desai (supra)*, the Supreme Court was primarily dealing with provisions of Sections 451 and 457 of the Code. While quoting the aforesaid two provisions of the Act in the judgment, it was observed in para 7 as under:

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely: 1. owner of the article would not suffer because of its remaining unused or by its misappropriation; 2. court or the police would not be required to keep the article in safe custody; 3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and 4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

To safeguard the interests of the prosecution, it was directed that following measures should be adopted giving instances contained in para 12 reproduced hereinbelow:

“12 For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after: (1) preparing detailed proper panchnama of such articles; (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and (3) after taking proper security.”

The State of Karnataka vs. Subramanya Biliya Kodiya Mavinakurva and Ors. Wherein the Karnataka High Court held at Para No.5 as follows:

5. As regards the merit of the impugned order is concerned, the court below being convinced with a certificate produced by the second applicant issued by his employer Srikumar Roadlines and also daily enquiry report dated 14.11.2012 has inferred that he is an employee of the said Roadlmes. Keeping open the question of the ownership of the seized property/cash amount in question the court below has ordered interim custody by taking the photographs of currency notes and also by calling upon the applicant to execute the indemnity bond of Rs. 50,000/- with one surety for the likesum.

6 As per the principle enunciated in the cases cited supra, the Court can return the money as interim custody.

¹ (2010) 6 SCC 768

7 A perusal of the record reveals that the police seized an amount of Rs.1,10,000/- from the petitioner under cover of panchanama. At the time of arguments the learned counsel for the petitioner submitted that the petitioner will bear the expenses for taking of photographs. The learned counsel for the petitioner further submitted that the petitioner will furnish security for return of the money as interim custody. If the money is not returned, it may cause undue hardship and financial loss to the petitioner and even if the money is released, it may not cause any hardship to the respondents.

8 Having regard to the facts and circumstances of the case, the trial Court is hereby directed to return the cash of Rs.1,10,000/- as interim custody seized from the petitioner after taking photographs at the cost of the petitioner and also on furnishing a bank guarantee by the petitioner for an amount of Rs.1,10,000/- to the satisfaction of the Judicial Magistrate of I Class, Atmakur.

9 Accordingly this Criminal Petition is allowed. As a sequel, the miscellaneous petitions, pending if any in this Criminal Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 07.07.2017

Kvsn