

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9836 OF 2017

ORDER:

The petitioner (A2) is the partly successful revision petitioner before the learned XV Additional District and Sessions Judge, Nuzvid of Krishna District, in Criminal Revision Petition No.70 of 2017, dated 23.08.2017. Impugning the conditions imposed by the learned Sessions Judge in the revision order supra for release of the interim custody of the vehicle, the present petition is filed.

2. Heard counsel for petitioner and the public prosecutor representing the State.

3. The petitioner A2 is the brother of A1 and one of the accused among in Crime No.115 of 2016 of Agiripalli P.S. registered for the offences punishable under Sections 143, 148, 323, 332, 354 and 307 IPC. It appears, for Section 353 at best, Section 354 is mistakenly mentioned, for no outraging of modesty of any woman involved in the case even from the material on record; leave, that is not germane for purpose of the petition, but for if at all the police can file a memo for correction of said provision of law during investigation.

4. In the course of investigation of the crime supra, the petitioner filed application in CrI.M.P.1224 of 2017 before the

learned Magistrate under Section 451 Cr.P.C. for the interim custody of the Toyota Fortuner vehicle bearing No.AP 16CQ 9999 with Chasis No.MBJ11JV6104031989-0814 and Engine No.11KDV601597 of 2014. The said vehicle was seized by police on 06.06.2016. It is in the vehicle the accused persons allegedly travelled before the attack on the police in registration of the crime supra for their seizing the same.

5. The learned Magistrate, by order dated 12.05.2017, dismissed the application for interim custody of the vehicle filed by the petitioner not even the owner for owner of the vehicle is A1. The observations therein were that the vehicle purchased by A1 was hypothecated to Toyota Finance. The petition for interim custody is opposed by prosecution saying A1 and the other followers of him are rowdy sheeters and many criminal cases are pending against A1 and as investigation is in progress and A1 is neither apprehended nor surrendered, the petitioner being brother of A1 is not entitled to interim custody of the vehicle.

6. It is the said dismissal order when impugned before the learned Sessions Judge supra, the learned Sessions Judge allowed the application by imposing as many as eight conditions in Para 11 of his order, dated 23.08.2017. The order of the learned Sessions Judge speaks that as per public prosecutor the A1 to whom the vehicle belongs neither surrendered nor apprehended and the vehicle is used in

commission of the offence and the petitioner A2, as brother of A1 filed the application for custody of the vehicle is not the owner but for A1 is the owner though what he contends is that the vehicle if kept idle will be rusted and spoiled by exposure to sun and rain and is under hypothecation to the Toyota Finance and ready to furnish sufficient sureties and abide by conditions to be imposed for release of the vehicle. The petitioner - A2 cannot be permitted to maintain the petition without surrender of his brother - A1 in abscondance. However, keeping in view of the condition of the vehicle, likely to be spoiled to dust and rust by exposure to sun and rain, it is appropriate to pass orders for protecting the condition of the vehicle.

7. It is with that conclusion in the order, the observation Para 11 reads as follows:

“11. This Crl.R.P. is partly allowed, setting aside the orders passed in Crl.M.P.No.1224/2017, dt.12.5.2017 by the II Addl. Judicial First Class Magistrate, Nuzvid and it is ordered that the vehicle i.e., Toyota Fortune bearing No.AP 16CQ 9999 shall be given to interim custody to A1 (not to the petitioner GPA) subject to verification of the ownership of the vehicle as per R.C. on the following conditions:

- (i) The main accused A1 shall surrender before the court (or otherwise being apprehended by police by way of arrest) and face the criminal proceedings before court and only after his appearance before the court, the order of interim custody would come into force;*

- (ii) *A1 shall execute personal bond of Rs.10,00,000/- (Rupees ten lakhs) with one cash surety or a bond from surety of equallent value by deposit of original title deed of the surety before the court to the satisfaction of II Additional Judicial First Class Magistrate, Nuzvid.*
- (iii) *The vehicle shall be kept in the safe custody of the financier (Toyota Financiers) till disposal of the case before the trial court and subject to final orders of the trial court;*
- (iv) *The financier shall not release the vehicle to A1 (registered owner) till disposal of the case subject to final orders of the case without permission from the court, but may continue to collect the monthly instalments;*
- (v) *The financier shall take care of the vehicle and the maintenance expenses if any to the vehicle, servicing etc., shall be collected from A1;*
- (vi) *The financier is at liberty to collect reasonable monthly rent of the vehicle from A1 for the custody and possession of the vehicle with him;*
- (vii) *The financier shall produce the vehicle before Court during the course of trial when required by court with the assistance of police, the transport expenses shall be borne by A1; police shall assist the financier to produce the vehicle before the court whenever required;*
- (viii) *The above orders are subject to final orders that may be passed in the main case.”*

8. Practically the revision order is unsustainable more particularly for the reason that A1 without surrender and without submitting to the jurisdiction of the learned Magistrate, when police are showing him as prime accused

and in abscondence, question of on his behalf not even by the financier but by his brother no way concerned seeking interim custody by filing application does not arise as rightly observed by the learned Magistrate and thereby, the question of release of the vehicle even by imposing onerous conditions does not arise, leave about no onerous conditions can generally be imposed as the interim custody is to protect the condition of the vehicle by permitting to use the vehicle as *custodia legis* for the ultimate production as and when required before the court as final disposal of the property will be passed by the court ultimately after or while disposal of the main case.

9. Having regard to the above, the revision order is set aside and liberty is given to the A1 to file any application before the learned Magistrate to consider for interim custody after hearing and particularly by following the guidelines and directions in the expression of the Hon'ble Apex Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat***¹ and subject to execution of bond and also for value of the vehicle either to furnish bank guarantee or one and half times of it an immovable property security and in case of immovable property security, it is by deposit of title deeds and execution of a bond on Rs.100/- stamp for confirming the creation of equitable mortgage in favour of the court officer and also on

¹ AIR 2003 SC 638

affidavit of ²A1 of the vehicle will be kept as it is condition and it would not be alienated and value not be impaired in any manner to anybody by transfer or otherwise and also with a direction to RTA concerned not to register any transfer of the vehicle without prior permission of the learned Magistrate.

10. Accordingly and with the above direction, this criminal petition is disposed of. Miscellaneous petitions pending, if any, in all these cases shall stand closed as consequence.

26.10.2017
SS

DR.B.SIVA SANKARA RAO, J

