

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.114 of 2018

ORDER:

This Criminal Revision Case is filed under Sections 391 and 401 Cr.P.C by the petitioner aggrieved by the docket order dated 10.01.2018 in CrI.M.P.No.10 of 2018 in Crime No.195 of 2017 of PS Thangallapally on the file of Judicial Magistrate of First Class, Sircilla, whereunder the learned Magistrate dismissed the petition filed by the petitioner under Section 451 Cr.P.C for return of the two lorries involved in the aforesaid crime.

2) The facts in brief are to the effect that on 23.12.2017, when Sub-Inspector of Police, PS Thangallapally along with staff was patrolling at Jillella X roads, found two sand loaded lorries bearing Nos.AP 29 W 3429 and TS 07 UD 1445 coming from the side of Sircilla and when the police stopped the vehicles, the two drivers fled away leaving the lorries at the spot. The S.I secured two mediators and seized the sand loaded lorries under the cover of seizure panchanama and registered a case in Crime No.195 of 2017 under Sec.379 IPC, Sec.21 (4) of Mines and Minerals (Regulation) Act, 1957 (for short “MMDR Act”) and Sec.3 of Prevention of Damage to Public Property Act, 1984 (for short “PDPP Act”) and produced the vehicles before the learned Magistrate.

3) Thereupon the petitioner filed CrI.M.P.No.10 of 2018 for granting of interim custody of the two lorries on the submission that the original owner of the lorry bearing No.AP 29 W 3429 namely C.Nagaraju sold the

said lorry to the petitioner for Rs.40,900/- under an agreement dated 16.06.2017 and similarly the owner of the other lorry bearing No.TS 07 UD 1445 namely G.Srishailam sold the said lorry to the petitioner for Rs.69,000/- under sale deed dated 07.01.2017 and thus the petitioner is the owner of the two lorries but however, till date he could not apply before the concerned authorities for transfer of the RCs in his favour and therefore, the custody of the lorries may be given to him. It appears, before the Magistrate both the original owners appeared and reported no objection for return of the two Lorries to the petitioner. Learned Magistrate however dismissed the application on the observation that as per G.O.MS No.15 Industries and Commerce (Mines-I) dated 19.02.2015 which was issued to amend the earlier G.O.MS No.3, Industries and Commerce (Mines-I) Department dated 08.01.2015, a procedure was prescribed to be followed by the Investigating Officer after seizure of the vehicles involved in commission of theft and illegal transportation of the sand in contravention of Telangana State Sand Mining Rules, 2015. As per said G.O.MS No.15, petition under Section 451 Cr.P.C is not maintainable since a separate procedure was prescribed for return of the seized vehicle. Thus the learned Magistrate opined that he cannot entertain the application.

Hence the instant CrI.R.C.

4) Heard Sri N.Manohar, learned counsel for petitioner and learned Addl. Public Prosecutor for the State (Telangana).

5) On a careful perusal of the material on record, this Court is of the considered view that the Magistrate erred in not exercising the jurisdiction vested in him under Section 451 Cr.P.C. It must be noted that the police registered the crime for the offences under Sec.379 IPC, Sec.21 (4) of MMDR Act and Sec.3 of PDPP Act and produced the vehicles in question before the Court. As far as Sec.379 IPC is concerned, the Court has power to pass an appropriate order under Sec.451 Cr.P.C. So the learned Magistrate cannot shun to entertain the application.

a) Then the G.O.MS No.15 dated 19.02.2015 is concerned, the said G.O.MS No.15 also did not exclude the jurisdiction of Magistrate to entertain an application under Sec.451 Cr.P.C. Para 12 of G.O.MS No.15 speaks about Rule 13 of the Telangana State Sand Mining Rules, 2015. This Rule 13 concerns about “offences”.

b) The aforesaid G.O says that any vehicle transporting sand along with transit pass, if found carrying sand in excess of the quantity specified in the transit pass/transit form or in excess of quantity permitted by the Transport Department, such excess quantity shall be imposed a fine @ Rs.2000/- per MT. Thus according to this rule, carrying excess quantity though an offence, fine is only prescribed and seizure and confiscation of the vehicle is not contemplated when the vehicle involved in such offences is for two times.

c) The Rule further says that any vehicle/machinery, if found involved in illegal extraction and transportation of sand in contravention of these rules, shall be levied penalty as detailed therein depending upon

the nature and capacity of the vehicle. So as per this rule, illegal extraction and transportation of the sand without any permission is an offence and for the first two occasions, fine alone is payable and seizure and confiscation of the concerned vehicle is not prescribed.

d) Then Para 12 of the G.O.MS No.15 further state that if the vehicle/machinery found involved in offence for more than two times, such vehicle/machinery along with the sand will be seized/confiscated by the officers mentioned in the said rule. The procedure is also prescribed as to the method and manner of confiscation of the vehicle. In this regard it is mentioned that the seizing officer shall issue show cause notice to the person/owner from whom the vehicle/machinery is to be seized/confiscated and upon issuing such show cause notice, such officer shall immediately take steps by preparing seizure/confiscation report and produce vehicle/machinery before the competent Court to enable the person/owner from whom the vehicle/machinery is seized to file an application under Section 451 Cr.P.C for release of the vehicle and competent Court shall pass orders in accordance with law. In the alternative, the person/owner of the vehicle/machinery shall be permitted to submit explanation to the show cause notice along with an application to the authorized officers seeking release of vehicle/machinery. It is further mentioned that upon receipt of explanation to the show cause notice and the application for release of the vehicle, the authorized officer shall consider the application and pass appropriate orders in accordance with law within a period of two (2) weeks.

6) Thus on a careful study, G.O.MS No.15 dated 19.02.2015 would not exclude the jurisdiction of a Magistrate to pass an order under Section 451 Cr.P.C. Therefore, the learned Magistrate was not right in observing that Section 451 Cr.P.C has no application to the facts of the present case.

7) Accordingly, the CrI.R.C is allowed by setting aside the impugned order and as a sequel, learned Judicial Magistrate of First Class, Sircilla is directed to pass an appropriate order on merits as per law within one (1) week from the date of receipt of a copy of this order.

Consequently, miscellaneous applications pending, if any, shall stand closed.

Date: 06.02.2018

Note: Issue C.C today.

(b/o)
SCS

U. DURGA PRASAD RAO, J

