

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION NO.1059 OF 2018

ORDER:

This petition is filed by the State under Section 482 Cr.P.C. seeking to quash the order dated 20.11.2017 in Criminal Revision Petition No.33 of 2017 on the file of the VIII Additional District Judge, Krishna at Vijayawada, whereunder the learned Sessions Judge confirmed the order dated 24.04.2017 in CrI.M.P. No.1775 of 2017 passed by the III Additional Chief Metropolitan Magistrate, Vijayawada in crime No.177 of 2017 of Padamata police station, Vijayawada, allowing the petition filed under Sections 451 and 457 Cr.P.C. for return of crime vehicle viz. Bus bearing No. AR-02-5462 on certain conditions.

2. Heard Sri Posani Venkateswarlu, Public Prosecutor for the State of Andhra Pradesh, the learned counsel for respondent No.1 and perused the record.

3. The learned Public Prosecutor would submit that the crime vehicle was exceeding the permissible limits of backside hangings viz. as against the limit of 60%, it was having 69%; that the vehicle was registered on 15.10.2016 with Arunachal Pradesh Government and as per the record, it was released from the manufacturer on 22.10.2016; that the Arunachal Pradesh Government cancelled its registration; that unless the registration of the subject vehicle is restored and fitness certificate is obtained from the competent authority concerned, the respondent-owner cannot ply the said vehicle; that these aspects have not been considered by the Courts below and ordered the release of the subject vehicle to the interim custody of the respondent-owner on conditions, and ultimately, he prayed to set aside the orders passed by the Courts below.

4. On the other hand, learned counsel appearing for respondent-owner would submit that the subject vehicle was seized in a case registered for the offence punishable under Section 304A IPC against the driver of the vehicle in connection with a road accident occurred; that the learned Sessions Judge has elaborately dealt with all the contentions raised and was pleased to dismiss the revision petition confirming the order of the learned Magistrate; that the contentions raised before this Court and the Court of Session were not raised before the learned Magistrate; It is his further contention that the order of suspension of the registration of the subject vehicle was quashed by the High Court of Gauhati, Itanagar Permanent Bench (Naharlagun), vide its order dated 08.03.2018 in W.P. (c) No. 358(AP)2017 & batch; that unless the vehicle is physically produced before the authorities concerned, fitness of the vehicle cannot be extended; that there are valid documents to ply the said vehicle; that the learned Magistrate rightly dealt with all the contentions raised and entrusted the vehicle to the interim custody of the owner, and the learned Sessions Judge rightly confirmed the said order; that there is no infirmity in the concurrent findings arrived at, by both the Courts below , and ultimately, prayed to dismiss the Criminal Petition.

5. In view of the contentions put forth by both sides, the point for determination is whether the impugned order passed by the learned Sessions Judge can be quashed ?

6. As per the record produced before this Court, a case in crime No.177 of 2017 of Patamata police station was registered against the driver of the subject vehicle viz. Bus bearing No. AR-02-5462, for the offence punishable under Section 304A IPC in connection with a road accident that

occurred on 17.03.2017. The vehicle got national permit. It is a contract carrier. It is the allegation that the subject vehicle was exceeding the backside hanging limits i.e. as against the permissible limit of 60%, it was having 69%. The other contention put forth before this Court is that registration of the vehicle was done on 15.10.2016, but it was released from the manufacturer on 22.10.2016. They are not relevant factors here. However, as per the material produced before this Court, the High Court of Gauhati, Itanagar Permanent Bench (Naharlagun), vide its order dated 08.03.2018 in W.P. (c) No. 358(AP)2017 & batch, was pleased to restore the registration of the vehicle, which was cancelled earlier by the Government of Arunachal Pradesh on 09.06.2017. Therefore, the subject vehicle has a valid registration to ply. As per the record, fitness of the vehicle was valid up to 14.10.2017. Now, the vehicle is in the custody of the Station House of Officer, Patamaka Police Station, Vijayawada city. Therefore, it is not possible for the respondent-owner to produce the same before the authorities concerned and get the fitness certificate extended.

7. Learned counsel for the respondent-owner would submit that once the vehicle is released as per the order passed by the learned Magistrate, necessary fitness certificate would be obtained and the vehicle would be put to use. In such a case, the inspecting authority of the vehicle would take care of violation i.e. whether the vehicle has rear overhanging ratio of 69% as against the permissible limit of 60%. Ownership of the respondent No.1 is not in dispute. Owner of the vehicle cannot be faulted with and cannot be deprived of his custody of his vehicle pending trial. The learned Magistrate as well as the learned Sessions Judge gave elaborate reasons and imposed appropriate conditions

for release of the vehicle. There is no infirmity in the orders passed by both the Courts below. There are no merits in the contentions raised by the learned Public Prosecutor. The Criminal Petition is devoid of merit and liable to be dismissed. However, in the facts and circumstances of the case, it is made clear that the respondent-owner shall ply the vehicle after obtaining necessary fitness certificate from the appropriate authority.

8. The Criminal Petition is, accordingly, dismissed.

Miscellaneous Petitions pending, if any, in this Criminal Petition shall stand closed.

15.03.2018
DRK

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