

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.321 of 2018

ORDER:

Heard learned counsel for petitioner and learned Additional Public Prosecutor and this CrI.R.C. is disposed of at the admission stage with their consent.

2) This Cr. R.C. is filed by the petitioner, who is a third party, aggrieved by the docket orders dated 21.12.2017 and 02.01.2018 passed by the Judicial Magistrate of First Class, Railway Koduru in CrI.M.P.No. of 2017 in Cr.No.414 of 2017 of Railway Koduru PS.

3) The police of Railway Koduru PS registered a case against the accused for the offence under Sections 379, 109, 120B, 147, 148, 307, 353 r/w 149 IPC and Sections 20(1)(c) (i) (ii) (v) (vi) (x), 20 (d) (i) (a) (b) (2) (a) (b), 29 (i) (a) (b), 29 (2) (b) (4) (a) (i) (ii) (b) of A.P.Forest Act Rul3 of A.P.Sandal Wood Transit Rules, 1959 and Section 3 of Prevention of Damage to Public Property, 1984 and seized the Hyundai Grand Car bearing registration No.AP 04 BL 6382. The petitioner/3rd party claiming himself as owner of the said car filed petition under Section 457 Cr.P.C. before the Judicial Magistrate of First Class, Railway Koduru seeking interim custody of the aforesaid car. The Court returned the said petition on 21.12.2017 on the observation as to how the petition is maintainable as the seized property was involved in forest offence. On 02.01.2018 the petitioner

made a representation that the petition was filed for return of the property; property was seized by Railway Koduru Police; the seized property is the property of 3rd party who filed the petition and hence the petition is maintainable under Section 457 Cr.P.C. Thereupon, the Court again returned the petition with an endorsement that previous objection dated 21.12.2017 was not complied properly.

4) The submission of learned counsel for petitioner is that there is no embargo for the Court to deal with the petition under Section 457 Cr.P.C. either under A.P.Forest Act or any other enactment and the Court also did not specifically mention as to how the petition was not maintainable before the said Court. Therefore, the return of the petition is not justified under law.

5) I find force in the said submission. The lower Court returned the petition with the observation as to how the petition was maintainable as the seized property was involved in forest offence. Merely because a case was registered for the forest offence that does not mean that Court cannot deal with the application filed for return of the property under Section 457 Cr.P.C. unless some statute creates an embargo on the power of the Court to deal with the aforesaid application. Therefore, the lower Court is not right in returning the petition without specifically mentioning the statute that creates an embargo for dealing with such petition.

6) Therefore, this Crl.R.C. is allowed and the impugned order is set aside with a direction to the Judicial Magistrate of First Class, Railway Koduru to make a specific mention as to the statute which creates an embargo on the Court to deal with the application under Section 457 Cr.P.C. and if there is no such embargo to deal with the application, pass an order on merits within four weeks from the date of receipt of a copy of this order.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 23.02.2018

Note: Office to communicate copy of this order to the concerned Court forthwith.
(b/o)
Murthy

U.DURGA PRASAD RAO, J

