

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4641 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') by the petitioner questioning the order dated 29-03-2018 passed by the Metropolitan Sessions Judge – cum – Special Court for NDPS Cases at Visakhapatnam (for short, 'the Court below') in Criminal M.P.No. 473 of 2018 in DRIF No. DRI/HZU/VRU/48/ENQ-05 (INT-05)/2017.

2. The petitioner is a transport company engaged in the business of transportation of goods from one place to another throughout India. M/s. Chemical System Technologies (India) Private Limited, Dehradun (for short, 'M/s. CST Private Limited'), booked transportation of dyes and chemical materials by e-way bill No. AP EW 17121194814 issued by Commercial Tax Officer, Government of Andhra Pradesh, from Visakhapatnam to Dehradun. During raids, the respondent found 804 K.Gs. of Ganja along with chemicals and dyes and the same were seized as per procedure and a crime is registered against the accused. It is the contention of learned counsel for the petitioner that the petitioner, being the transport company, has to transfer goods from Visakhapatnam to Dehradun, otherwise it will drastically affect the business of the petitioner and that it is unconcerned with the Ganja that was seized. The respondent filed a lengthy counter contending that M/s. CST Private Limited booked transportation of dyes and chemicals and bags containing Ganja of 804 K.Gs. and thereby the goods seized by the respondent are liable to be confiscated to the State and that at this stage, the goods cannot be released for *interim* custody of M/s. CST Private Limited. Upon hearing argument of both

counsel, the Court below dismissed the petition assigning its own reasons. Aggrieved by the same, the present petition is filed.

3. At the hearing, learned counsel for the petitioner has contended that the Court below did not consider the request of the petitioner only on the imaginary count that HDPE bags containing Ganja were booked by the same company for transportation from Visakhapatnam to Dehradun and in fact, those were not booked and on the other hand, if the chemicals are kept idle, they become useless and therefore requested to give *interim* custody of the same during pendency of inquiry.

4. Learned Special Standing Counsel appearing for the respondent has supported the order while contending that the chemicals are also liable to be confiscated to the State in case M/s. CST Private Limited was found guilty for transportation of Ganja in contravention of Section 8 (c) read with Section 20 (b) (ii) of NDPS Act since the goods were booked by the said company for transportation from Visakhapatnam to Dehradun and thus, the petitioner is not entitled to claim *interim* custody of chemicals and dyes on any ground.

5. As seen from the material on record, it is the specific case of the petitioner that chemicals and dyes along with certain HDPE bags were booked by M/s. CST Private Limited under proper consignment and the duty of the petitioner is to transport the goods from Visakhapatnam to Dehradun and that the petitioner is only a transport company and not the owner of the goods. Section 451 of Cr.P.C. deals with custody and disposal of property pending trial in certain cases. Similarly, Section 457 of Cr.P.C. deals with procedure by police upon seizure of property. By the date of filing petition before the Court below, the investigation was not completed and it was at crime stage. Therefore, Section 457 of Cr.P.C. alone is applicable. According to Section 457 (1) of Cr.P.C.,

whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. Sub-Section (2) further says that if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation. As per the material on record, the petitioner is only a transport company and M/s. CST Private Limited is the owner of the goods and at best, the latter may claim *interim* custody of the goods. If, for any reason, *interim* custody of the goods is given to the petitioner for delivery at Dehradun, question of production of the same as and when directed by the Court below would not arise. Apart from that, as per the provisions of NDPS Act, property shall be confiscated to the State in the event of finding accused guilty. Therefore, at this stage, *interim* custody of the goods cannot be given to the petitioner and the petition deserves to be dismissed.

6. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 03-08-2018.
JSK

M.SATYANARAYANA MURTHY, J.