**THE HON'BLE SRI JUSTICE N.BALAYOGI**

**Criminal Revision Case No.2260 of 2018**

**ORDER :**

The petitioner aggrieved by the order dated 6.7.2018 in Criminal M.P. No.1102 of 2018 in Crime No.181 of 2017 passed by the Chief Metropolitan Magistrate at Visakhapatnam, preferred this revision.

2. The brief facts are that the CID Police registered a crime No.181 of 2017 for the offences punishable under Sections 420, 120(b), 465, 468, 471 read with Section 34 I.P.C. against 9 accused. The police seized JCB 3DX XTRA BACKHOW LOADER and kept it in Kotabommali Police Station. The petitioner has financed the accused Mahesh Vaddi to a tune of Rs.20,78,252/- for the purchase of JCB. The petitioner has the legal right to take back the custody of the asset for the defaults of their customer. If the vehicle is not used for a long time, it may cause irreparable loss and the worth of the JCB is Rs.8,00,000/-.

3. The CID filed counter contending that Vaddi Mahesh and others conspired among themselves and in pursuance of their conspiracy, created false and forged documents for the purpose of cheating and used the said false documents as genuine and made transaction in various banks fraudulently and dishonestly and had a

wrongful gain to them and corresponding wrongful loss in crores of rupees to the Government exchequer.

The CID further contended that A2 stated that he purchased the JCB in the month of September, 2015 in the name of his son Vaddi Mahesh/A1. Further, A2 stated that they paid some amount received through illegal foreign exchange transaction and took finance from SREI Finance i.e., the petitioner. The seized vehicle is kept in the premises of Kotabommali Police Station for safe custody. It is further contended that the proposals would be submitted to the Government for attachment of JCB along with other movable properties seized by the Investigating Agencies for their auction and to credit the proceeds to the Government exchequer.

4. The trial Court dismissed the Crl.M.P. No.1102 of 2018 in Crime No.181/2017 on 6.7.2018.

5. Now, the point that arises for determination is :

> "Whether the order of the trial Court suffers from legal infirmities warranting interference?"

6. The contention of the petitioner is that the petitioner financed to purchase JCB. The tax invoice, agreement copy and hypothecation deed specified *prima facie* evidence for giving interim custody of the said vehicle.

It is further contended that the trial Court ought to have considered that JCB was registered in the year 2017 and the loan was sanctioned to the customer in the year 2015 and the trial Court erroneously concluded that accused therein executed hypothecation agreement after registering the crime. The trial court ought to have seen that in pursuance of defaults committed by A1, the Receiver was appointed by the Arbitral Tribunal to take physical possession of the same.

7. *Per contra,* the CID contended that the bank accounts disclosed total inward domestic remittance amounting to approximately Rs.680.94 crores. An amount of Rs.569.93 Crores has been remitted out of India to mainly five concerns towards purchase of customized software. Rs.111.60 crores were transferred to other entities in India. The foreign remittances were made through Canara Bank, Overseas Branch, Visakhapatnam in the name of two companies and the JCB van was purchased with ill-gotten money. The proposals were submitted to the Government for attachment of JCB along with other movable properties seized by the Investigating Agencies for their auction and to credit the proceeds to the Government exchequer.

8. A perusal of the record clearly established that a case in crime No.181 of 2017 for the offences punishable under Sections 420, 120(b), 465, 468, 471 read with Section 34 I.P.C. was registered. A1 and A2 are son and father. The vehicle was seized under the cover of mediators report and the petitioner is a third party to whom JCB was hypothecated, as it financed money for purchase of the seized JCB.

9. The trial Court observed that the complainant submitted that JCB was purchased with illegal transactions and the documents were created for the purpose of interim custody. The loan documents were created subsequent to/after seizure of the JCB.

10. In the case of ***M/s.Ashok Leyland Finance Limited Vs. Ramesh Kumar*** (2002 (3) Crimes (HC) 322) the Apex Court held that the High Court observed under Section 451 that interim custody of vehicle subject matter of hire purchase agreement, entitlement of hirer or of financier, respondent got the vehicle financed by petitioner and vehicle seized by police in a criminal case got registered by the respondent against third party. Respondent had already gone defaulter in repayment of instalments under hire purchase agreement and because of various reasons, petitioner has to take possession of the vehicles.

11. In the case of ***Ashok Leyland Finance Limited Vs. State of Haryana and Others*** ((2002) 3 RCR (Cri) 551) the Punjab and Haryana High Court held that the 2nd respondent was required to pay to the petitioner accumulated amount of Rs.2,53,000/- in 23 monthly instalments and had paid only Rs.2,25,700/-. Thus, complete liability as such has not been discharged by respondent No.2 in terms of the agreement dated 2.1.1996. The object of invoking provisions of Section 230 of the Act is to recognise the hirer as the owner not only to retain the registration certificate in respect of vehicle which is subject matter of hire purchase agreement, but also to help him to obtain the

fitness certificate, get the vehicle insured, get the route permit etc., the necessary compliance of which is required to be done under the Act so as to run the vehicle without any hindrance from any quarter. It also observed that it would not mean that the hirer would become absolute owner because of the conditions of the hire purchase agreement. Hirer has to pay the amount in instalments so as to become absolute owner in terms of the hire purchase agreement. Since the default in payment of the amount, ordered to release the vehicle in question on spurdari to the petitioner, the financier.

In this case the vehicle involved in the crime was challaned and impounded by the Transport Officer.

12. In the case of ***Mrs.Shahanaz Khan Vs. The S.H.O., Alwal, Ranga Reddy District*** (2003 (1) APLJ 3 (HC)) our High Court held that in matters relating to seizure of Motor Vehicles normally interim custody has to be granted in favour of the person in whose name the registration certificate stand. An order under Section 451 is only a temporary arrangement to provide custody of the vehicle.

In this case the crime was registered under Section 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999 and the police arrested the accused.

13. In the case of ***Rajkumar N.Jain Vs. Inspector of Police, P.5, Police Station, Madras*** (1996 Cri LJ 3440) the Apex Court held that in the light of Section 451 of the Code of Criminal Procedure, it

will remain that the vehicle in question is said to have been used by the assailants just to reach the scene of occurrence and also to have an escape from the scene after the crime was committed. Therefore, the vehicle is required to be identified during the time of trial in order to establish the guilt of the assailants/accused. The registration certificate produced by the petitioner in the Court shows that the first hire purchase agreement was cancelled by the petitioner himself and the relevant endorsement for the existing hire-purchase agreement depicting the petitioner as the owner is found available. In law, if the vehicle is purchased under hire-purchase agreement, the financier is deemed to be the owner. Admittedly, the petitioner is a third party, not at all concerned with the alleged offence, however, the hirer happens to be one of the accused and the vehicle was used by all the accused, according to the prosecution. Therefore, under Section 451 Cr.P.C. the temporary custody of the vehicle can be given to the petitioner subject to condition imposed by the Court.

In this case the vehicle is being used only for transportation of assailants.

14. In the case of ***State of Gujarat Vs. Manojkumar Achalaji Khatri*** (2001 Cri LJ 1223) the DCB Police raided the truck when it was parked near Mahakali Temple Asarwa. Huge quantity of illicit liquor worth Rs.7,12,050.00 was found in the truck and accordingly the truck was seized. In such circumstances, the court held that the truck may be a case property within the meaning of Section 451 of the Code of

Criminal Procedure inasmuch as the vehicle was used for carrying illicit liquor but, it would not be desirable to detain the truck at the police station or to keep under the control of the police. That would naturally ruin the truck. For the possession of the truck and interim custody of the truck, order was passed imposing four conditions and those conditions are just, reasonable as well as proper for preservation of the said truck and for production, as and when required by the Court during inquiry and trial and further ordered not to sell the truck and not to change its colour etc.,

In the said case the truck was seized while transporting illicit liquor, the vehicle was involved in the crime and it was in the police custody. If the vehicle is kept in the police station, naturally it would be ruined. Accordingly interim custody can be given in such circumstances.

15. In the case of ***Cholamandalam Investment & Finance Co. Ltd., Chennai, Tamilnadu State Vs. State of Andhra Pradesh and another*** (2015 (1) ALD (Crl.) 450) it was held that it is for the financier, who is entitled in his own right without intervention of the Court on the repossession of the property for the defaults made, if necessary to bring the vehicle to sale and realize. Once as per the hypothecation agreement terms, the creditor/financier got right of repossession and sell the vehicle, for enforcing the contractual obligations. However, an undertaking from purchaser to produce the vehicle if required before the Court during trial is to be obtained for the

Court otherwise even proceed against person in custody to enforce for production. The petitioner being one such entity, therefore, entitled to exercise general lien over vehicle, for which finance is made. More so, when a written stipulation with regard to right to exercise of lien by financier for any amount defaulted is incorporated in hypothecation loan agreement itself.

This is a case seeking permission of the court to lend support for such recourse of sale that too when no intervention of the Courts is required as per certain law principles of the Apex Court. The financier is at liberty to repossession of the vehicle.

16. In the case of ***General Insurance Council Vs. State of A.P.*** ((2010) 6 SCC 768) the Apex Court held that the insurer may move a separate application for release of recovered vehicle as soon as it was informed of such recovery before the jurisdictional court. Release to be made within 30 days of application and necessary photographs duly authenticated and certified may be taken and detailed panchanama prepared before release. Insurer to submit an undertaking/guarantee to remit proceeds from sale/auction of vehicle conducted by the Insurance Company in the event the Magistrate finally adjudicates that rightful ownership of vehicle does not vest with the insurer.

17. In the aforesaid cases in one case the transport officer challaned and impounded the vehicle and the hire purchaser committed default. In other case there was default in payment of instalments and

in another case the vehicle was used for transportation of the assailants and in another case the vehicle was used for transportation of illicit liquor. In all the above decisions, the vehicle is being used for other purposes. The third party, who is the financier, became owner when the purchaser defaulted the terms and conditions of the hypothecation agreement and contract.

18. But, in the present case the facts are different. The third party, the petitioner, is admittedly financed and specific allegation is that A2, father of the 2nd respondent, purchased the vehicle with ill-gotten money and taking finance from the petitioner. Therefore, I find no merit to interfere with the order of the Court below, more particularly when the Government proposed to sell the vehicle in auction and credit the amount to the Government exchequer.

19. The trial Court also observed that the property purchased is to avail finance facility prior to registering of F.I.R. It appears that the investigation is in progress. If really accused committed default in payment of instalments to the petitioner company, they ought to have take necessary legal steps earlier to the seizure of the JCB. Admittedly, the petitioner is a third party and no notices were served to all the accused. Some of the accused are not yet arrested. The crime was registered against the Money Laundering Act proposing that the property was taken over by A1 and A2. The petitioner merely filed Photostat copy of third party documents claiming interim custody of the property, therefore, at this stage, interim custody cannot be given.

The petitioner failed to show that the accused executed hypothecated agreement in favour of the petitioner to purchase JCB prior to the registering of the case with illegal source of money.

20. The petitioner filed tax invoice dated 5.9.2018 in the name of Mahesh Vaddi. The value of the vehicle is shown as Rs.25,99,523/-. In the said tax invoice it is clearly mentioned that it is under the hypothecation with M/s.Srei Equipment Finance Ltd., Kolkata. The date of hypothecation is on 3.9.2015 and the term loan sanctioned is Rs.20,78,252/-. There is agreement dated 3.9.2015 between the petitioner herein & the customer and the guarantors. As per the annexure-II to schedule-VII the instalments payable by Mahesh Vaddi are up to August 2019 commencing from November, 2015. The accused defaulted in payment of instalments. The vehicle is registered in the name of Mahesh Vaddi – R2 with registration No.AP 31 VXTR 9180 and the petitioner is recorded as financier. The vehicle was registered on 5.9.2015 and the date of deed of hypothecation and agreement is dated 3.9.2015 i.e., 2 days prior to the date of registration.

21. The above facts clearly goes to suggest that no doubt the petitioner is hypothecator of JCB bearing No.AP 31 VXTR 9180 and the vehicle is registered in the name of R2. The date of agreement and deed of hypothecation is 3.9.2015. It is also the fact that CID registered a case against the 2nd respondent and others in crime No.181 of 2017 for the offences punishable under Sections 420, 120(b), 465, 468, 471 read with Section 34 I.P.C. During investigation D.S.P.

seized two Mahindra Tractors and two trailers bearing Nos.AP 30Y 7072, AP 30Y 7073, AP 30Y 7074 and AP 30Y 7075 as they were purchased by A2 Vaddi Srinivasa Rao for the purpose of works to be taken place in Padma Priya Stone Crushing Private Limited. D.S.P. also seized one yellow coloured JCB, which alleged to have been purchased by A2, father of the 2nd respondent, in the name of the 2nd respondent in the month of September, 2015 and registered on 5.9.2015. The amounts paid for the purchase of those vehicles was received through illegal foreign exchange transaction and also by taking finance from the petitioner herein and the same was kept in the premises of Kotabommali Police Station for safe custody. It is also clear from the record that the Investigating Officer addressed letter to the Regional Transport Officer, Madhavadhara, Visakhapatnam, not to transfer the ownership of the above JCB until investigation is completed. It is further alleged that the father of the 2nd respondent confessed that he purchased JCB with illegal money and kept the same at Padmapriya Stone Crushing Private Limited at Srikakulam.

22. There is a clear assertion in the counter that the 2nd respondent and other accused conspired among themselves and in pursuance of their conspiracy created false and forged documents for the purpose of cheating and used the said false documents as genuine and made transaction in various banks fraudulently and dishonestly and had wrongful gain to them and corresponding wrongful loss in crores of rupees to the Government exchequer. A proposal was also

submitted to the Government for attachment of JCB along with other movable properties seized by the Investigating Agencies for their auction and to credit the proceeds to the Government exchequer.

23. In view of the above facts, I am of the clear and genuine opinion that the 2nd respondent and others conspired themselves and in pursuance of such conspiracy, created false and forged documents for the purpose of cheating and used the said false documents as genuine and made transactions with various banks fraudulently and dishonestly and had wrongful gain to them and corresponding wrongful loss in crores of rupees to the Government exchequer. The Government now intends to sell the petition vehicle along with other properties in auction and credit the proceeds to the Government exchequer.

24. In view of the above facts that the vehicle was purchased by the 2nd respondent with ill-gotten money and though the petitioner herein financed to purchase the said vehicle, he himself stated that the value of the JCB is Rs.8,00,000/- only, I am of the considered view that the order of the trial court is legal, valid, more particularly when the Government intends to sell the property in Court auction and credit the sale proceeds to the Government exchequer. The finding of the trial Court while dismissing the petition is legal, valid and do not suffer from any legal infirmities warranting interference.

25. In the result, the Criminal Revision Case is dismissed while confirming the order dated 6.7.2018 in Criminal M.P. No.1102

of 2018 in Crime No.181 of 2017 passed by the Chief Metropolitan Magistrate at Visakhapatnam.

26. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE N.BALAYOGI

13th November, 2018
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