

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10295 of 2018

ORDER:

This Criminal Petition is filed, under Section 482 Cr.P.C, to quash the proceedings dated 17.05.2018 passed in CrI.R.P.No.37 of 2018 by the IX Additional Sessions Judge (FTC), Krishna, Machilipatnam, whereunder the petitioner challenged the order dated 17.04.2018, passed in CrI.MP.No.529 of 2018 in Crime No.48 of 2018 by the II Additional Judicial Magistrate of First Class, Machilipatnam, in a petition filed under Section 451 Cr.P.C, for grant of interim custody of 26 bulls was dismissed but preferred a revision against the order to the IX Additional Sessions Judge (FTC), Krishna, Machilipatnam, which is not maintainable under Section 397(1) Cr.P.C. in view of bar under Section 397(2) Cr.P.C. (**V.C.Sukla v. State¹, K.K.Patel v. State of Gujarat² and Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd³**).

Of course, the District Judge, without advertng to the maintainability of revision, in view of bar under Section 397(2) Cr.P.C, passed the following order:

- (i) The revision petitioner to produce bank guarantee for Rs.5,75,000/- which is the estimated value of the cattle seized by the police within two weeks from the date of receipt of copy of the order before the concerned Magistrate.
- (ii) The revision petitioner shall assist and extend cooperation to the President of Nehru Pasuvula Santha & Gramabhivruddi Sangham, Gudlavalleru to keep the cattle in the sheds for their safety, provide proper fodder and medication.
- (iii) The President of Nehru Pasuvula Santha & Gramabhivruddi Sangham, Gudlavalleru who gave an undertaking letter to the Court that he would provide sheds and proper place for cattle of the revision petitioner shall keep all the cattle in the sheds and within the premises of the Society until further orders from the Court.

¹ AIR 1980 SC 962

² AIR 2000 SC 3346

³ (2001) 7 S.C.C. 401

- (iv) The Station House Officer, Gudlavalleru and Veterinary Doctor of Gudlavalleru are directed to visit the society shed frequently and submit a report once in a week to the II Additional Judicial First Class Magistrate, Machilipatnam, with regard to the health condition of the cattle.
- (v) The Revision Petitioner is directed to pay necessary charges to shift the cattle from the present place to the Society's shed at Gudlavalleru.
- (vi) The Revision Petitioner is directed to file personal affidavit undertaking not to alienate the said cattle and should allow the investigating agency and Doctor to verify the cattle periodically and ensure proper maintenance of the cattle.

Assailing the said order, the present Criminal Petition is filed for return of cattle but the order passed by the Sessions Judge itself is illegal and contrary to Section 397(2) Cr.P.C. and law laid down by the Apex Court. Therefore, the order of the Sessions Judge dated 17.05.2018 is set aside. The petitioner, in the present petition, requested to quash the order dated 17.05.2018 in CrI.R.P.No.37 of 2018 passed by the IX Additional Sessions Judge (FTC), Krishna, Machilipatnam. The order in revision is set aside on the ground that the revision is not maintainable in view of interdict contained under Section 397(1) Cr.P.C.

The Criminal Petition is, accordingly, dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 27.09.2018
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