

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10402 OF 2018

ORDER:

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), is filed by the petitioner to quash the order, dated 03.08.2018, passed in Crl.R.P. No.26 of 2018, by the learned III Additional District and Sessions Judge, Gadwal, confirming the order, dated 01.06.2018, passed in Crl.M.P. No.135 of 2018 in Crime No.59 of 2018, by the learned Judicial Magistrate of First Class, Alampur, filed under Section 451 of the Code for interim custody of vehicle/Goods Carriage MMV bearing No.TS 32T 1779.

2. The petitioner claiming to be the owner of aforesaid vehicle sought interim custody of it same during pendency of the case registered for various offences on the ground that the vehicle if allowed to be exposed to the sun and rain, it becomes rust and unfit for the use due to passage of time during pendency of the trial, and requested to quash the order passed by the learned Sessions Judge as well as the learned Magistrate and order for interim custody of the vehicle during pendency of the case before the Magistrate.

3. As seen from the record, the petitioner is claiming to be the owner of the aforesaid vehicle and it involved in the Crime No.59 of 2018 registered for the offences punishable under Sections 34, 406 and 188 IPC and Section 11 of the Prevention of Cruelty to Animals Act, 1960. The petitioner filed the petition under Section 451 of the Code

before the learned Magistrate for grant of interim custody during pendency of trial, but it is at the stage of crime. Though, the petitioner is entitled to interim custody subject to proof of ownership during pendency of trial or investigation but under different provisions, subject to compliance of law laid down by the Hon'ble Supreme Court in **Sunderbhai Ambalal Desai v State of Gujarat**¹. Whereas, the petitioner herein filed the petition under Section 451 of the Code, which is only for grant of interim custody during trial or inquiry, and filing of a revision against such an order before the Sessions Judge is another illegality as it is hit by Section 397 (2) of the Code. Therefore, entertaining a revision, passing an order by the Sessions Judge is a serious illegality and hit by sub-section 2 of Section 397 of the Code. Therefore, the order passed by the learned Sessions Judge is hereby set aside. However, the petitioner herein is not entitled to claim interim custody of the vehicle under Section 451 of the Code when the proceedings are pending at the stage of investigation itself.

4. Hence, the present Criminal Petition is dismissed at the stage of admission itself, granting liberty to the petitioner to file appropriate application under Section 457 of the Code claiming interim custody of the aforesaid vehicle if investigation is not completed, and in case investigation is completed, the petitioner is entitled to renew his request before the learned Magistrate.

¹. 2002 Law Suit (SC) 1346

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition, stand closed.

M. SATYANARAYANA MURTHY, J

October 01, 2018

Mgr

