

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3207 OF 2018

ORDER:

This revision is arising out of docket order, dated 09.11.2018 passed by the Judl. Magistrate of I Class, Kodangal, Mahabubnagar District, in CFR No.1944 of 2018 in Cr.No.58 of 2018 of Kodangal Prohibition and Excise Station, Mahabubnagar District, in returning the petition as not maintainable as the trial Court has no power to return the vehicle and the Deputy Commissioner of Prohibition and Excise only can release the vehicle.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State and perused the material on record.

3. Learned counsel for the petitioner submits that the petitioner is the owner of Tata Indica Vista LX TDI BS3 bearing No. KA 33A 5530. The police registered a case in Cr.No.58 of 2018 against the petitioner as well against some others and seized the vehicle on 22.10.2018 from A1. The petitioner herein, who is A3, is the owner of the vehicle in the said case.

4. Learned counsel for the petitioner further submits that that if the vehicle is kept in the same place without using it, it will get damaged. He further submits that the order passed by the trial Court returning the petition is not in accordance with law and sought for a direction to the trial Court for release of the vehicle. The petitioner is ready to furnish surety to the satisfaction of the trial Court.

5. Learned Public Prosecutor submits that the vehicle may be returned on imposing some conditions for its production whenever required by the trial Court.

6. The point for consideration is whether the petitioner is entitled for release of the vehicle?

7. Section 457 Cr.P.C. deals with procedure by police upon seizure of property. Clause (2) of Section 457 Cr.P.C. reads thus:

“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.”

8. The petitioner, admittedly claims that he is the owner of the vehicle and he was arrayed as A3 in the case registered by the Prohibition and Excise Officials. Objection raised by the trial Court is that the Deputy Commissioner of Prohibition and Excise is only competent to release the vehicle.

9. Learned counsel for the petitioner submits that the vehicle is with the 2nd respondent-Station House Officer, Kodangal Excise P & E Station, Mahabubnagar District.

10. Learned counsel for the petitioner placed reliance on the judgment rendered by this Court, dated 10.04.2012 in CrI.P.No.3471 of 2012 and sought for a direction to the Magistrate to release the vehicle to the petitioner for interim custody. In view of power under Section 457 Cr.P.C., the learned Magistrate is empowered to decide the competency of authorities subject to certain conditions.

11. In view of foregoing grounds urged, the docket order passed by the learned Magistrate is set aside directing the learned Magistrate to release Tata Indica Vista LX TDI BS3 bearing No. KA 33A 5530 to the petitioner for interim custody, subject to following conditions.

1. The petitioner shall execute a bond for Rs.3,00,000/- (Rupees three lakhs only) with one surety for a like sum to the satisfaction of the Judicial Magistrate of I Class, Kodangal, Mahabubnagar District.

2. The petitioner shall not alter the features of the vehicle.

3. The petitioner shall not transfer the vehicle or create encumbrances over it.

4. The petitioner shall produce the vehicle as and when required either by the trial Court or by the authority under the provisions of the A.P. Prohibition Act.

12. Accordingly, the Criminal Revision Case is allowed. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 28-11-2018
Hsd