

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL REVISION CASE No.146 OF 2022

ORDER:

This revision is filed to set aside the order dated 07.10.2021 passed in CrI.M.P.No.536 of 2021 in Cr.No.66 of 2021 of Jainath (M) Police Station by the Judicial Magistrate of First Class at Adilabad. The offences alleged against the petitioner herein are under Section 11 of the Prevention of Cruelty to Animals Act, 1960 (for short 'the PCA Act'), Section 5 of the A.P. Prohibition of Cow Slaughter and Animals Preservation (Amendment) Act, 1977 (for short, 'the Act').

2. Heard Sri S.Chandrasekhar, learned counsel for the petitioner, Sri Khaja Vizarith Ali, learned Asst.Public Prosecutor, for the respondent – State. Perused the record.

3. The allegation against the petitioner is that he is transporting the cows in his vehicle (Lorry) bearing No.MH-40-N-2929 (for short, 'the subject vehicle') in violation of the procedure laid down under the PCA Act, the provisions of the Act and also the Prevention of Cruelty to Animals (Care and Maintenance of Case Property Animals) Rules 2016 (for short, 'the Rules'). The Investigating Officer in the said crime has seized the subject vehicle. The petitioner herein claiming to be the owner of the

subject vehicle filed an application under Section 457 of Cr.P.C. vide Crl.M.P.No.536 of 2021 in Cr.No.66 of 2021 of Jainath Police Station, before the Court below seeking interim custody of the said vehicle. The learned Magistrate dismissed the said application vide order dated 07.10.2021 on the ground that the Central Government by invoking powers under Section 38(1) of the Act has formulated the Rules and as per the Rule 5(4) of the said Rules when a vehicle is involved in an offence under this Act, the Magistrate shall direct that the vehicle be held as a security. Therefore, the owner of the vehicle would have the same liability as that of the transporter. There is statutory embargo upon the release of the crime vehicle.

4. Learned counsel for the petitioner would submit that the said order is contrary to the Rules and also the principle laid down by the Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat**¹. There is no embargo on the learned Magistrate in giving interim custody of the said vehicle.

5. There is no dispute that Union of India by invoking its powers under Section 38(1) of the Act, formulated the above said Rules. Rule 5 of the Rules deals with execution of bond. As per Rules 5(4) of the Rules, where a vehicle has been involved in an

¹ 2003 (1) GLH 307

offence, the Magistrate shall direct that the vehicle be held as a security. Therefore, there is no embargo upon the Magistrate in giving interim custody of the vehicle.

6. It is relevant to note that the Apex Court in **Sunderbhai Ambalal Desai** (supra) categorically held that keeping the seized vehicles with the Police or Courts would not serve any purpose and the same have to be returned to the owners on verification of ownership documents and on imposition of some conditions.

7. Considering the said Rules and also principle laid down by the Apex Court in **Sunderbhai Ambalal Desai** (supra) and several other judgments, the Gujarat High Court vide order dated 05.09.2018 in R/Special Criminal Application No.7642 of 2018 granted interim custody of the vehicle seized to the owner of the vehicle on imposition of certain conditions. This Court agrees with the principle held by the Gujarat High Court. According to this Court, there is no embargo on the learned Magistrate in giving interim custody of the vehicle. Learned Magistrate has to ensure that the owner of the vehicle shall produce the said vehicle as and when it is required before the Investigating Officer and also before the Court below, as the case may be, and the learned Magistrate has to verify the ownership of the subject vehicle and give interim custody of the subject vehicle to the owner on imposition of certain

conditions such as production of original Registration Certificate, furnishing undertaking by the owner stating that he will not alienate, transfer or part with the possession of the vehicle or create any charge over the vehicle, or change the nature and physical features of it, during pendency of the crime or Calendar Case etc., On imposition of said conditions, the Court below has to give interim custody of the subject vehicle to the owner of the vehicle. Learned Magistrate has not considered the said aspects in the impugned order. Therefore, the impugned order is liable to be quashed.

8. It is relevant to note that the Apex Court considering the difficulties being faced by the farmers/owners of the animals advised Union of India to repeal the said Rules. It appears the said advice was not considered by the Union of India.

9. Be that as it may, in view of the above discussion, this Criminal Revision Case is allowed setting aside the order dated 07.10.2021 passed in CrI.M.P.No.536 of 2021 in Cr.No.66 of 2021 of Jainath (M) Police Station by the Judicial Magistrate of First Class, at Adilabad. The matter is remanded back to the learned Magistrate with a direction to consider the same afresh and pass appropriate orders in accordance with law within one week from the date of receipt of a copy of this order and shall release the

subject vehicle on verification of the ownership and also on imposition of certain conditions to its satisfaction as discussed supra.

Consequently, miscellaneous petitions, if any, pending, shall stand closed.

Date:29.04.2022
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K. LAKSHMAN, J