

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**THURSDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION NO: 6435 OF 2019

Between:

Pothuraju Narsimha, S/o Pullaiah Aged about 61 years, Occ. Business R/o 4-10-745/CS/2, Sidhartha Colony Nalgonda Town and District

...PETITIONER/ACCUSED NO.1

AND

1. The State of Telangana, Rep by its Public Prosecutor, High Court at Hyderabad.
2. The State of Telangana Rep. by SHO, P.S. Nalgonda I Town

...RESPONDENT/COMPLAINANTS

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to quash/set aside the order dated 16-07-2019 in CrI. M.P. No. 202/2019 of C.C. No. 433 of 2018 on the file of Judicial First Class Magistrate, Special Mobile Court at Nalgonda and release the seized kitchen ware items from Sri Sai Steel Palace run by the Petitioner herein

I.A. NO: 1 OF 2019

Petition under Section 482 of Cr.P.C praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to issue interim directions for interim release of the seized property to the Petitioner herein pending disposal of the main Criminal Petition

This Petition coming on for hearing, upon perusing the Memorandum of Grounds of Criminal Petition and upon hearing the arguments of Sri VIVEK JAIN, Advocate for the Petitioner and the Public Prosecutor on behalf of the Respondents.

The Court made the following: ORDER

THE HONOURABLE DR. JUSTICE D. NAGARJUN

CRIMINAL PETITION No.6435 OF 2019

ORDER:

This petition is filed by the petitioner/A1 in C.C.No.433 of 2018 on the file of Judicial First Class Magistrate, Special Mobile Court at Nalgonda, assailing the orders passed in CrI.M.P.No.202 of 2019 in C.C.No.433 of 2018, wherein the request of the petitioner for interim custody of the kitchen ware items seized by the police was declined.

2. The facts in brief are that the petitioner/A1 was running a chit business in the name and style of Sri Sai Chit Funds and Finance, Nalgonda Town. The de-facto complainant, who was a Member of one of the chit group SF-II, has filed a complaint that the petitioner though completed the chit period has failed to pay the chit amount and that he has kept the de-facto complainant's cheques and also got executed promissory notes. It is also stated that the said chit fund was closed on 12.01.2016.

3. On a complaint given by the de-facto complainant, a case has been registered against the petitioner/A1 and others in C.C.No.433 of 2018. During the course of investigation, the investigating officer has seized the kitchen ware items belonging to Sri Sai Steel palace at Nalgonda on the basis of the confession of the petitioner that the petitioner/A1 has invested 60% of his income of the chief business in the development of steel palace. The said steel kitchen ware are produced before the Court where the trial Court directed the police to keep the same in safe custody.

4. The petitioner has filed CrI.M.P.No.202 of 2019 stating that though he has been running the steel palace in the name of Sri Sai Steel Palace at Nalgonda, the said business is nothing to do with the chit fund business and he has never invested the money from the chit fund in the steel business and in case, if the steel articles are not released, they will be put to corrosion and gets spoiled on account of improper storage and also on account of weather conditions thereby sought for release of the said

articles in his favour and that he has prepared to give the sureties etc.

5. Learned Assistant Public Prosecutor opposed the said request stating that the property seized from the steel palace required to be marked as material objects during the trial and once the property is released for interim custody, it is very difficult to secure them and that there is every possibility that the petitioner may likely to sell them away in which case, it causes prejudice to the case of the prosecution and therefore, sought for dismissal of the petition.

6. On hearing both sides, the trial Court vide impugned order has dismissed the petition. Aggrieved by the same, the present petition is filed.

7. It is submitted by the learned counsel for the petitioner that the police have seized the articles belonging to the Steel Palace under Section 5 of the A.P. Protection of Depositors of Financial Establishment Act (for short, "the Act") and the said provision has already been repealed and

Section 102 Cr.P.C., is also not applicable to this case, thereby seizure of the articles is irregular and it is also submitted that the trial Court should have favourably consider the request of the petitioner, as he is ready to submit whatever the surties are required.

8. Head both sides and perused the record.

9. Now, the point for determination is whether the order dated 16.07.2019 passed in CrI.M.P.No.202 of 2019 in C.C.No.433 of 2018 can be quashed/set aside?

10. Section 5 of the Act does not deal with the seizure of the property. In fact, Section 3 of the Act describes the circumstances in which movable properties can be attached. The police will get the power to seize the property under Section 3 of the Act in case where there are reasons to believe that the financial establishment is acting in a manner prejudicial to the interest of the depositors.

11. In the case on hand, as rightly observed by the trial Court, Section 5 of the Act has no application in respect of the attachment of the properties. Rule 6 of the Telangana

Protection of Depositors of Financial Establishment Rules, 1999 (for short, "the Rules") go to show that where the competent authority is satisfied that any property, which is liable for attachment under the Act, is likely to be concealed or transferred, which may result in defeating the purpose of the Act, may make an order seizing the property. Therefore, considering Rule 6 of the Rules and Section 3 of the Act, the police can attach the property.

12. The attachment of the steel kitchenware is only done in order to see that the property, which is seized, may not be concealed or transferred to other persons in order to defeat the rights and interest of the depositors. In case if ultimately the Court finds the petitioner guilty, the property attached will be confiscated and the sale proceeds, if any, will have to be given to the depositors.

13. The trial court has observed that the steel kitchen ware is a property of the crime and it is required for marking of material objects. In fact, Section 102 Cr.P.C. is not at all application to this case because this property is not involved in any crime and the same could not be

marked in the evidence. It is not the property, which was committed theft, of the de-facto complainant. The prosecution is expected to prove that the petitioner has committed offence under the provisions of the Act and it is also supposed to be proved that out of the income of the chit fund business, he has invested in the steel business only, then the sale proceeds, if any, in respect of the kitchenware can be distributed among the members of the chit, in case prosecution succeeds in its case.

14. The property seized by the police is not perishable, as they are house hold steel kitchen items. They will certainly subjected to rust or damage on account of different weather conditions and if the steel items get old, nobody would come forward to buy and if they are not properly preserved, they also get damaged and also likely to get de-shaped, which ultimately may not be in a position either to use or to sell.

15. If the property is kept with the police and it is not properly stored and guarded, if they get rusted or damaged in any manner, it will not fetch any money even if it is put

to public auction, thereby the very intention and purpose of seizure of the articles would get defeated. The trial Court should have considered these aspects and should have granted interim custody of the seized articles by keeping some items as sample for the purpose of trial in case if they are required by taking sufficient sureties after ascertaining its value by way of appraiser, who is an expert in the assessment of the value of the steel items in the market.

16. Considering the discussion above, the criminal petition is allowed and the order dated 16.7.2019 passed by the trial Court in CrI.M.P.No.202 of 2019 in C.C.No.433 of 2018 by the Judicial First Class Magistrate, Special Mobile Court at Nalgonda is hereby set aside. The trial Court is directed to assess the value of the property seized with the help of appraiser, an expert in assessment of the value of the articles seized, and after ascertaining its value, the said articles to be released in favour of the petitioner for interim custody on execution of a bond equivalent to the value of the articles seized, along with two sureties with

an undertaking that they would deposit the value of the seized articles in the Court, in case if ultimately the Court finds that the petitioner is guilty and if the Court decides to confiscate the property under the provisions of the Act. The trial Court is directed to keep few articles as sample for consideration during the course of trial.

Miscellaneous petitions, if any, shall stand closed.

**SD/-L.SIVA PARVATHI
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Judicial First Class Magistrate , Special Mobile Court at Nalgonda
2. The Station House Officer , Nalgonda I Town Police Station , Nalgonda
3. One CC to SRI. VIVEK JAIN Advocate [OPUC]
4. Two CCs to Public Prosecutor High Court of Judicature at Hyderabad (OUT)
5. Two CD Copies
6. One Spare Copy



HIGH COURT

DATED:28/07/2022



ORDER

CRLP.No.6435 of 2019

ALLOWING THE CRIMINAL PETITION

[Handwritten signature]
06/08/2022