
(2001) 08 AP CK 0067

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 3368 and 3369 of 2001

Baldevraj Sharma and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

Central Motor Vehicles Rules, 1989 — Rule 139
Criminal Procedure Code, 1973 (CrPC) — Section 452

Citation : (2002) 2 ACC 66 : (2001) 2 ALD(Cri) 435 : (2001) 2 ALT(Cri) 267 :
(2001) 2 APLJ 415 : (2002) CriLJ 2105

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Miland G. Gokhale, for the Appellant; Public Prosecutor, for the Respondent

Judgement

T.Ch. Surya Rao, J.—Since common questions of law and fact are involved in both these petitions, they can be heard and disposed of together.

2. Both the petitioners herein claiming to be the owners of two lorries bearing Nos. AP 10U 2646 and AP 10T 1521 sought interim custody of those two vehicles when they had been seized and produced before the Court of the Additional Judicial Magistrate of First Class, Bohongir. They filed two CrI. M.P. Nos. 3209 and 3181 of 2001 in Crime No.30 of 2001. Under separate orders, the learned Magistrate directed both the vehicles to be released and given custody of temporarily in favour of the petitioners on the condition of the petitioners each executing a bond for an amount of Rs.1.5 lakhs with two sureties for a like sum each and also on the petitioners undertaking not to mortgage or sale the said vehicles or change their physical features and to produce the vehicles before the Court as and when required by it.

3. Having been aggrieved by the condition imposed by the learned Magistrate, the petitioners are before this Court assailing that part of the orders imposing condition for execution of the bonds by them with two sureties.

4. The learned counsel appearing for the petitioners contends that the condition directing the petitioners each to execute a bond for an amount of Rs.1.5 lakhs with two sureties for a like sum each is onerous and cannot be imposed under the circumstances inasmuch as the petitioners are owners of the vehicles and the vehicles cannot be under any circumstances confiscated even in the event of the main cases ending in conviction. The petitioners are obviously not the accused in the crime and they are third parties. When the sand was being committed theft of, both the vehicles having been laden with the sand subject matter of theft, were seized by the Investigating Officer on a report given by the concerned Mandal Revenue Officer. The Indian Penal Code does not contain any provision for the confiscation of the vehicle, which is the subject of the crime in one form or the other. The learned counsel appearing for the petitioners seeks to place reliance upon a Judgement of this Court in B.BHEEMUDU v. STATE OF A.P.1. In the said Judgement, it has been held by this Court at page 127 as excerpted hereunder:

"But, here is a case, where in the event of conviction of the accused, that is the petitioner herein, his vehicle which has been seized and which is the case property cannot be confiscated. If the vehicle is liable for confiscation, the condition can be imposed to furnish some security as in the event of conviction and order of confiscation, and in the event of the vehicle being alienated or transferred, the amount equivalent to that furnished as security can be realised. But, such is not the situation arising here."

5. Obviously, a learned single Judge of this Court proceeded under the assumption that there has been no provision where under the vehicle involved in the crime in the event of the case ending in conviction of the accused therein to confiscate the same. It is apt here to refer Section 452 of the Code of Criminal Procedure ("the Code" for brevity), which is germane for consideration in the context as it pertains to the disposal of the property at the conclusion of the trial. Section 452 of the Code may be excerpted hereunder insofar as it is relevant for the present purposes:

"452. Order for disposal of property at conclusion of trial:- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2)

(3)

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or

when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange, whether immediately or otherwise."

6. On a perusal of the said provision, it is manifest that the Court is empowered to pass an order of either destruction or confiscation or delivery of the property to any person claiming to be entitled to possession thereof. The Code has clearly envisaged confiscation of the property by the Court at the conclusion of the trial. In fact, it is obliged to pass such an order disposing of the property at the end of the trial. In view of this clear provision, the contention that the property cannot be confiscated and, therefore, the condition directing the petitioners each to execute a bond for an amount of Rs.1.5 lakhs with two sureties for a like sum each is onerous and, under the circumstances, cannot be imposed, merits no consideration. The provisions of Section 452 of the Code having not been brought to the notice of this Court in the Judgement referred to supra, therefore, with due respect it cannot be a binding precedent having been rendered per incuriam. On a principle of law, it cannot be said that the Court has no power to confiscate the property which is the subject matter of the said case at the conclusion of the trial.

7. In the Judgement of this Court referred to supra, it has been directed to release the vehicle by taking an undertaking from the parties concerned not to sell, transfer, or encumber the said vehicle in any manner and to produce the same as and when required by the Court and to keep the original R.C. Book of the vehicle in the custody of the Court pending trial and also directed the transport authority not to issue any duplicate R.C. Book to the owner of the vehicle, which is involved in the crime. Therefore, the request of the petitioners that a similar such direction be given in the instant case instead of directing the petitioners each to execute a bond for an amount of Rs.1.5 lakhs with two sureties for a like sum each can be considered.

8. Having regard to the facts and circumstances of these cases, the orders impugned require to be modified by deleting the condition of producing two sureties for a sum of Rs.1.5 lakhs each and instead depositing the R.C. Books into Court while keeping duly attested xerox copies of the same with them as per Section 130 of the Motor Vehicles Act and Rule 139 of the Central Motor Vehicles Rules framed thereunder.

9. In the result, both the Criminal Petitions are accordingly disposed of and the impugned orders stand modified to the extent indicated above.