
(1993) 01 AP CK 0007

In the Andhra Pradesh High Court

Case No : Criminal Miscellaneous Petition No. 154 of 1993

Baligera Bheemudu alias Bheemaian

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:

Arms Act, 1959 — Section 25(1)

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482

Penal Code, 1860 (IPC) — Section 307, 341, 342, 353

Citation : (1993) 1 ALT 278 : (1993) 1 APLJ 126 : (1993) CriLJ 3462

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : S. Venkateswara Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This petition is filed under Sections 451 and 482 of Criminal P.C. seeking indulgence of this court to relax the conditions imposed by the Judicial I Class Magistrate, Gadwal in Criminal M.P. No. 1899 of 1992 on 6-1-1993, insisting upon the petitioner to furnish security for Rs. 50,000/- apart from depositing the original R.C. Book relating to the petitioner's Ambassador car bearing No. ATY 9621, for its release. The said car is a case property in connection with an accusation in Crime No. 82/92 of Gadwal town Police Station for the offences punishable under Ss. 341, 342, 307, 353, I.P.C. and 25(1)(A) of Arms Act. The imposition of condition of furnishing security, if permissible under law, but if it is onerous, may be, as rightly contended by Mr. M. N. Narasimha Reddy, the learned Additional Public Prosecutor, this court may not be inclined to interfere in normal circumstances, unless the conditions imposed are highly disproportionate to the offences alleged against the accused. 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 a case property, cannot be confiscated. If the vehicle is liable for confiscation, the conditions 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. Even after conviction for the above offences when the vehicle is not liable for confiscation, the Judicial I Class Magistrate has grossly erred in imposing a condition of security by the petitioner and it is a case of total non-application of mind by the learned Magistrate. These proceedings are all penal in nature and disabling provisions. All penal and disabling provisions have to be strictly construed, and when there is no power of confiscation even after conviction of accused and even after sentencing him to imprisonment or fine, there is no jurisdiction for the criminal court to impose any conditions to furnish security for the release of case property pending trial. It is needless to mention that trial of the criminal offence will take considerable time and it is not desirable that the case property should be kept exposed to adverse seasonal conditions resulting in the loss of value of the vehicle and its efficacy. The only safeguard which has to be made is to ensure the production of the vehicle for identification during trial and for that the holding up of original R.C. Book of the vehicle is a sufficient safeguard. In addition to that, a written undertaking can be taken from the petitioner that he will not alienate, transfer or encumber the vehicle in any other manner and that he will produce the vehicle as and when directed by the Magistrate to do so. To ensure that the petitioner does not obtain a duplicate R.C. Book from the concerned transport authority and try to sell, transfer or encumber the same, it is open to the learned Magistrate to address to the concerned transport authority that the said vehicle is a case property, that there is a written undertaking that the said vehicle shall not be sold, transferred or encumbered and that original R.C. Book is in the custody of the court for ensuring the production of the vehicle as and when called for.

2. In the above circumstances, I pass the following orders :

(1) That the Ambassador car bearing Registration No. ATY 9621 shall be released to the petitioner on his furnishing a written undertaking to the court of the Judicial I Class Magistrate, Gadwal, that he will not sell, transfer or encumber the said vehicle in any manner and that he will produce the said vehicle for identification as and when called for by the said court.

(ii) The court of Judicial I Class Magistrate, Gadwal, shall keep the original R.C. Book relating to the above vehicle in its custody pending trial.

(iii) It is open to the court of the Judicial I Class Magistrate, Gadwal, to address the concerned transport authority stating not to issue any duplicate R.C. Book to the petitioner or anybody else claiming through or under him.

3. The Criminal Petition is accordingly disposed of at the stage of admission.

4. Order accordingly.