

(2002) 12 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5503 of 2002

Mrs. Shahanaz Khan

APPELLANT

Vs

Station House Officer

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 —
Section 5
Criminal Procedure Code, 1973 (CrPC) — Section 451
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2003) 1 ALD(Cri) 242 : (2003) 1 ALT(Cri) 171 : (2003) 1 APLJ 3

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Gulam Rosul, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The petitioner is the owner of the vehicle Toyota Qualis bearing Registration No. AP 11 J 1023 purchased from the Association Financial Services Private Limited on hypothecated agreement dated 27-4-2001 (Model 2001) on payment of initial amount of Rs.1,35,000/- and also Rs.16,000/- insurance charges - tax payment and also Rs.88,000/-, installments payment of eight installments out of sixty installments, totaling an amount of Rs.2,39,000/-. It is also stated that the respondent/complainant seized the said vehicle in connection with Crime Nos. 475, 485 and 503 of 2002, registered under Sections 409, 420 I.P.C., u/s 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999 and u/s 138 of Negotiable Instruments Act. It is also stated that the petitioner along with the other co-accused have started the banking business in the name and style of Praja Co-operative Urban Bank Limited since 4-8-2001 with permission of Reserve Bank of India in Hasmathpet, Alwal and since then the petitioner is carrying on the aforesaid business under the well established

Rules and Regulations. It is further stated that it is alleged that the petitioner along with seven co-accused have conspired and collected huge amounts from various depositors amounting to Rs.2 crores at very high rate of interest than permissible by the other Banks and Institutions. It was further alleged that the petitioner along with the other co-accused deviated from the Rules and Regulations of the Reserve Bank of India without any comprehensive loan policy including the necessary Rules in regard thereto and that the petitioner along with the other co-accused had sanctioned loans on benami names to their friends and relatives and have not obtained the required security from the borrowers to assess their credit worthiness and repayment capacity.

2. It is further stated that the complaint lodged by one Koteswara Rao on 9-11-2001 in Cr. No. 475/2001 is not a depositor, but he only admitted the members for share certificates of Rs.500/- each and this share amount will come only after 20 years as per the Reserve Bank of India Rules and a co-operative Bank has no power to release the amount unless the maturity period is completed. It is further stated that another complainant, Jeevan Rao who filed a complaint on 13-11-2001, also is not a depositor, but he deposited certain sum in circulation Scheme. The other complaint is filed by one Ashok Kumar on 4-12-2001, registered as Cr. No. 503/2001, demanding Rs.9,00,000/- without providing sufficient time to pay the demanded amount even though the Bank issued a cheque for Rs.5,00,000/- which was refused by the complainant. It is stated that the said crime was registered without in ignorance of Section 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999 and the police arrested the accused on 6-1-2002 and produced before the Court on 11-1-2002 and the Hon"ble Court was pleased to remand them and before their remand all the documents including the properties of the accused persons were seized by the 1st respondent instead of following the procedure prescribed under A.P. Co-operative Societies Act.

3. It is further stated that the Bank was duly registered under the A.P. Co-operative Societies Act, 1964 and all the Rules and Regulations under the said Act are applicable for the day to day affairs and governance of the Bank. It is further stated that the District Registrar of Co-operative Societies, Ranga Reddy District had informed the Superintendent of Police, Ranga Reddy District about the seizure of the Bank records and sealing of the Bank premises and it was also mentioned in the said letter that the Police have no power to seize the documents and sealing of the Bank premises. It is also stated that inspection has to be carried out u/s 52 of the A.P. Co-operative Societies Act by the authorities under the Act for fixing clear cut responsibilities in respect of the amount misappropriated, but the Police have disregarded the directions given by the District Co-operative Registrar. It is further averred in the petition that the vehicle seized by the respondent/complainant is kept in the District Court premises without proper maintenance, cleaning, oiling etc., due to which the value of the engine is diminishing and ultimately the vehicle is getting spoiled. It is further stated that the learned District and Sessions Judge had made the

following order:

"The petitioner, as already stated, paid Rs.2,39,000/- to the financier that should be taken as the value advanced by the petitioner in purchasing the vehicle. The Motor Vehicle Inspector has valued its present value at %Rs.3,62,650/-. Therefore the petition is allowed and the vehicle Toyota Qualis bearing No. AP.11 J 1023 ordered to be released on the petitioner executing bond for Rs.3,62,650/- and also on providing third party bank guarantee for Rs.2,40,000/- which is amount has already paid to the financier to the satisfaction of this Court. The petition is ordered accordingly".

4. It is further stated that seven months lapsed after seizing the vehicle and the petitioner has to pay Rs.77,000/- to the financier as otherwise the vehicle will be seized by the financier and under these circumstances, unable to give the Bank guarantee ordered by the learned District and Sessions Judge, the present Criminal Petition is filed seeking quashing of the order passed in CrI.M.P. No. 1839/2002 dated 19-11-2002 on the file of Principal Sessions Judge, Ranga Reddy District and seeking a further direction to release the said vehicle to the petitioner without insisting on the third party bank guarantee pending disposal of the Criminal Petition.

5. Sri Mohd. Ghulam Rasool, the learned counsel appearing for the petitioner had submitted that the petitioner is ready and willing to comply with reasonable conditions which may be imposed. But however, the learned counsel submitted that the petitioner is unable to provide third party bank guarantee for Rs.2,40,000/- and in such circumstances, in the light of the decision in A. Venkatanarayana Vs. State of A.P., and also T.SENTHIL KUMAR Vs. SUB-INSPECTOR OF POLICE 2001[1] CRIMES 126 , this Court may make a modified order imposing reasonable conditions in this regard.

6. The learned Additional Public Prosecutor had taken me through the nature of the allegations made and had contended that in the light of the facts and circumstances of the case, the interest of the prosecution also maybe safeguarded by imposing reasonable conditions.

7. Heard both the counsel and also perused the material available on record.

8. The only request made by the learned counsel for the petitioner is that inasmuch as the petitioner is unable to produce third party bank guarantee for Rs.2,40,000/-, she is unable to get the vehicle released and consequently she is put to serious loss and hardship. In GOPALASWAMY Vs. NAGARAJAN 1987 L.W. [CRL.]487 it was held that an order passed u/s 451 Cr.P.C. is only temporary in nature and would subsist only till disposal of the main case. In P.SEKHAR Vs. STATE 1992 L.W. [CRL] 47 it was held that in matters relating to motor vehicles, normally interim custody has to be ordered in whose name the Registration Certificate stands so that the vehicle can be put to the best use. In LALITHCHAND NADAR Vs. STATE 1990 [2] MWN [CRL] 23 it was held that an order made u/s 451 Cr.P.C. is only a temporary arrangement to provide custody

with proper person as the Court thinks fit. In the decision referred (2) supra, the Madras High Court had laid down certain conditions while ordering interim custody of the vehicle.

9. As can be seen from the facts of the present case, the learned District and Sessions Judge, Ranga Reddy, had already passed an order. But however, the petitioner is aggrieved of the condition imposed relating to the furnishing of the third party Bank guarantee. In view of the facts and circumstances of the case, inasmuch as the petitioner is unable to comply with the condition of furnishing the Bank guarantee, the said condition of furnishing third party Bank guarantee for Rs.2,40,000/- is hereby set aside. However, this Court in the decision referred (1) supra in similar circumstances had allowed the petition with the following directions:

"(i) That the van bearing registration No. AP 02 T 9311 shall be released to the petitioner on his furnishing a written undertaking to the Court of the Addl. Judicial Magistrate of I Class, Ananthapur, that he will not sell, transfer or encumber the said vehicle in any manner and that he will produce the same for identification as and when called for by the said Court.

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

(iii) It is open to the Court of the Additional Judicial I Class Magistrate, Ananthapur, 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".

10. Hence, in view of the facts and circumstances of the present case, the impugned order is set aside and the Criminal Petition is allowed by issuing the following directions:"

1. That the petitioner shall execute a personal bond for Rs.3,62,650/- and also furnish two sureties for the likesum to the satisfaction of Principal District and Sessions Judge, Ranga Reddy District;

2. That the petitioner shall file a written undertaking before the learned Principal District and Sessions Judge, Ranga Reddy District to the effect that she will not sell, transfer or encumber the said vehicle Toyota Qualis bearing Registration No. AP 11 J 1023 in any manner and that she will produce the same for identification as and when called upon by the Court in this regard;

3. That the petitioner shall leave the custody of the R.C. Book of the aforesaid vehicle with the learned Principal District and Sessions Judge, Ranga Reddy District, pending trial;

4. That the petitioner shall undertake in writing that she will not obtain any duplicate Registration Certificate in respect of the aforesaid vehicle;

5. That the learned Principal District and Sessions Judge, Ranga Reddy District

shall 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.

6. That the petitioner shall undertake in writing that she will not change or alter the original position i.e., colour or shape of the vehicle or materially alter the vehicle; and

7. That the petitioner shall also undertake in writing that the aforesaid vehicle will not be used for any illegal purpose.