

(2022) 03 TEL CK 0020

In the Telangana High Court

Case No : Criminal Revision Case No. 94 Of 2022

Pagilla Nageshwara Rao

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401

Indian Penal Code, 1860 — Section 304A, 451, 457

Motor Vehicles Act, 1988 — Section 177, 181, 196

Citation : (2022) 03 TEL CK 0020

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Venkat Rao Patil

Final Decision : Disposed Of

Judgement

1. This revision is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short 'the CrPC') to set aside the order dated 22.02.2021 passed in CrI.M.P.No.62 of 2021 in Cr.No.142 of 2020 of Maddirala Police Station, by the Judicial Magistrate of First Class, Thungathurthy, Nalgonda District.

2. Heard Sri Venkat Rao Patil, learned counsel for the petitioner, learned Public Prosecutor for respondent - State. Perused the record.

3. Perusal of the record would reveal that the subject vehicle i.e. Swaraj Tractor bearing No.TS-04-EW-8796 attached with Trailer bearing No.AP 2080758 (for short, 'the subject vehicle') was seized in the subject crime. The offences alleged against the accused are under Sections 304-A IPC and Sections 181 and 196/177 of the Motor Vehicles Act, 1988 (for short, 'the Act').

4. The petitioner herein, claiming to be the owner of the subject vehicle, filed a petition under Section 451 read with Section 457 IPC vide CrI.M.P.No.62 of 2021 in Cr.No.142 of 2020 seeking interim custody of the said vehicle. The Court below has dismissed the said application vide impugned order dated 22.02.2021 on the

ground that the subject vehicle is not having third party insurance as on the date of accident. The Court below has also referred the principle laid down by the Apex Court in Usha Devi Vs. Pawan Kumar Civil Appeal No(s). 9936-9937/2016, dated 26.03.2018 and Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283.

5. There is no dispute that the petitioner herein is the owner of the subject vehicle. In proof of the same, he has filed a copy of the Registration Certificate. There is also no dispute that the subject vehicle was seized in the present crime for the aforesaid offences. The ground on which the Court below dismissed the said application is that the subject vehicle is not having valid third party insurance as on the date of accident. It has relied upon the principle laid down by the Usha Devi (supra). In the said case, the Apex court examined award passed by the Motor Accident Claims Tribunal, High Court under the provisions of the M.V.Act, claiming compensation due to the death of the deceased.

5. In Usha Devi (supra), the Apex Court reiterated recommendations given by the High Court in judgment and one of the recommendations is that where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of.

6. It is only a recommendation. Moreover, it is under the provisions of the Motor Vehicle Act. Whereas, in the present case, the petitioner, claiming to be the owner of the subject vehicle, filed an application under Section 451 read with 457 of Cr.P.C. seeking interim custody of the vehicle. Therefore, the Court below cannot dismiss the said application on the ground that the subject vehicle is not having valid third party insurance as on the date of accident. The Court below should have noticed that if there is no valid third party insurance to the subject vehicle as on the date of accident, the claimant, claim compensation under the Motor Vehicles Act from the owner of the vehicle. If there is valid insurance, they can claim the compensation from the insurance company and owner of the property. While dealing with application under Section 451 read with 457 of Cr.P.C. filed seeking interim custody of the vehicle, learned Magistrate cannot step into the shoes of Motor Accident Claims Tribunal, and cannot decide the said application complying with the provisions of the Motor Vehicles Act and the principle laid down by the Apex Court in Motor Vehicles Act. Moreover, in Usha Devi (supra), the Apex Court has reiterated the recommendations made by it in one of the judgments. Learned Magistrate without considering the same, erroneously dismissed the application filed by the petitioner.

7. In Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283, the Hon'ble Apex Court 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 any condition. Though the Court below referred the principle laid down by the Apex Court in *Sunderbhai Ambalal (supra)*, erroneously dismissed the said application relying upon *Usha Devi (supra)*. Therefore, the impugned order is liable to be set aside.

8. In the result, the Revision is disposed of. The order dated 22.02.2021 passed in CrI.M.P.No.62 of 2021 in Cr.No.142 of 2020 of Maddirala Police Station by the Judicial Magistrate of First Class, Thungathurthy, is set aside. The matter is remanded back to the learned Magistrate, with a direction to consider the said application and give interim custody of the subject vehicle to the petitioner herein on verification of the ownership documents and on imposition of certain conditions to its satisfaction.

As a sequel, the miscellaneous Petitions, pending if any, shall stand closed.