

IN THE COURT OF THE SESSIONS JUDGE: ANANTHAPURAMU

Present: Junaid Ahmed Moulana, Sessions Judge

Saturday, this the 2nd day of February, 2019

Criminal Revision Petition No.1/2019

Between:

P. Loviza Mary W/o P. Ramesh Kumar,
31 yrs, R/o D.No.3, Infant Jesus Mansion,
4th cross, Kanaka Vinayaka Layout,
Shanthi LYT, Dooravani Nagar,
Bangalore-560016

... Revision petitioner

And

State by Station House Officer, Kadiri town P.S.

... Respondent

This revision petition coming on 29.01.2019 for hearing before me in the presence of Sri A. Nagarjuna Reddy, Advocate for the revision petitioner and of Public Prosecutor for the respondent and after hearing both sides and upon perusing the records, this court passed the following:

ORDER

This criminal revision petition is filed under Section 397 of Criminal Procedure Code (herein after referred as 'The Code') by the petitioner assailing order dated 10.12.2018 made by Additional Judicial I Class Magistrate, Kadiri in Cr.M.P.No.2534/2018 in Cr.No.144/2018 of Kadiri town P.S. refusing to grant interim custody of TATA Indica V2 LX car bearing No.KA 53 B 8565.

2. The facts and circumstances that lead to file this revision are, the petitioner herein filed Cr.M.P.No.2534/2018 in Cr.No.144/2018 before Court below under Section 457 of The Code contending, she is the registered owner of TATA Indica V2 LX car bearing No.KA 53 B 8565, it was seized by the respondent in connection with Cr.No.144/2018 of Kadiri town P.S. and is in need of the vehicle, therefore, prayed to grant its interim custody with undertaking to produce the same as and when directed.

3. The respondent through Asst. Public Prosecutor resisted the petition on the ground, investigation in this case is pending and the accused have committed offence on deceased Bandikala Bhogadamma while taking her in TATA Indica V2 LX car bearing No.KA 53 B 8565, if its interim custody is granted to petitioner, there is possibility of disappearance of evidence available in the vehicle and also the

petitioner will not produce the said vehicle during trial, prayed for dismissal of the petition.

4. The Court below after hearing the petitioner and the respondent and after considering the material on record including the accusations in the case found, the offence alleged against the accused in Cr.No.144/2018 is said to have committed in TATA Indica V2 LX car bearing No.KA 53 B 8565 and in case its custody is granted to the petitioner, it will cause prejudice to the prosecution and also possibility of disappearance of evidence available therein in commission of the offence, with that view dismissed the petition by order dated 10.12.2018.

5. The petitioner feeling aggrieved by the order of court below, has come up with this petition assailing the order on the following and among other grounds set out here under:-

1. The order of Court below is against law, weight of evidence and probabilities of the case.

2. The order of Court below is very vague and no proper reasons were assigned in dismissing Cr.M.P.No.2534/2018.

3. The Court below ought to have believed the version of petitioner and ordered release of the vehicle and it ought to have come to conclusion the petitioner is entitled for release of vehicle and failed to observe the vehicle is exposed to sun and light will get damaged.

4. The Court below ought to have ordered for release of vehicle on furnishing sufficient security and dismissed the petition hastily with predetermined mind and in any event order of Court below is liable to be set aside.

For these and among other ground prayed to allow the petition and to set aside order of Court below and order interim custody of the vehicle in question.

6. Heard both sides.

7. On hearing the petitioner and the respondent, upon perusing the material on record including observation in the impugned order of Court below, the point that arises for consideration is

Whether the order dated 10.12.2018 dismissing Cr.M.P.No.2534/2018 refusing to grant custody of TATA Indica V2 LX car bearing No.KA 53 B 8565 is sustainable?

8. **POINT:-**

The case in Cr.No.144/2018 was initially registered with the respondent basing on the report of Bandikala Padmavathi, daughter of deceased Bandikala Bhogadamma, as woman missing and similarly case in Cr.No.195/2018 under Sections 302, 201 IPC was registered in Tavarekere P.S., Karnataka State on recovering the dead body of deceased Bhogadamma, in the course of investigation in Cr.No.144/2018 it was found missing Bhogadamma was murdered and in that connection case in Cr.No.195/2018 under Sections 302, 201 IPC was registered at Tavarekere P.S., Karnataka State. On the request of the respondent herein made through Superintendent of Police, Ananthapuramu, the case filed in Cr.No.195/2018 of Tavarekere P.S. was transferred to respondent herein on the point of jurisdiction and to carry on further investigation, during further course of investigation it came to light on 26.6.2018 deceased Bhogadamma was taken in TATA Indica V2 LX car bearing No.KA 53 B 8565 from Kadiri to Bangalore by accused 1 to 3, on the way she was done to death in the same vehicle, and her body was dumped near Tumkur to Mogadi Nice Road, at the outskirts of Bangalore city.

9. By that time the case file in Cr.No.195/2018 was transferred to the respondent herein, S.H.O., Tavarekere P.S. conducted post mortem examination on dead body of deceased Bhogadamma, as none were there to claim her dead body, buried her dead body in the vicinity of Tavarekere P.S., subsequently after the case file in Cr.No.195/2018 was transferred to respondent herein, further investigation was carried out and accused 1 to 3 were apprehended in connection with death of deceased Bhogadamma on 20.7.2018 and on the alleged of accused No.3 TATA Indica V2 LX car bearing No.KA 53 B 8565 was recovered at N.R. Layout, Rammurthy Nagar, Bangalore and the same is in the custody of the respondent, subsequently accused 1 to 3 were enlarged on bail vide orders in Cr.M.P.No.1027/18 and 1028/18 dated 15.10.2018 by VIII Additional District Court, Ananthapuramu, thereafter the petitioner herein has come up with Cr.M.P.No.2534/2018 under Section 457 of the Code to handover custody of TATA Indica V2 LX car bearing No.KA 53 B 8565 pending enquiry and trial in the case.

10. The petitioner admittedly is the wife of accused No.3 involved in Cr.No.144/2018 and has sought interim custody of the vehicle on the ground she is in need of the vehicle for her regular use and it is kept idle, it will be damaged due to dust and rain, this request of the petitioner was turned down by the Court below on the ground if the vehicle is handed over to her there is possibility of causing prejudice to the prosecution, also disappearance of evidence available therein relating to the commission of offence and this decision of Court below is in challenge in this petition.

11. The law relating to disposal of properties produced before criminal Court or their order for custody pending trial and inquiry is provided in Section 451 of the Code wherein the criminal Court is empowered to make such order, for proper custody of the property pending inquiry or trial as it thinks necessary. Similarly in Section 457 of the Code the procedure relating to custody of property seized and is reported to Magistrate is provided wherein it was directed if such property is not produced before the criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit for disposal of such property or delivery of such property to the person entitled for possession thereof.

12. Considering the procedure laid down under Sections 451 and 457 of the Code, the Apex Court in case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*¹ made certain guidelines with regard to granting custody of vehicles produced before criminal courts and not produced before criminal courts, it is profitable to refer the guidelines laid therein and it says,

"Whatever be the situation it is of no use to keep seized vehicles at the police stations for a long period and it is for the Magistrate to pass appropriate orders immediately by take appropriate bond and guarantee as well as security for return of the seized vehicles if required at any point of time in case where the vehicle is not claimed by the accused, owner or insurer company or by third person then such vehicle may be ordered for auction by the Court. If the vehicle is insured with insurance company, then insurance company be informed by the Court to take possession of the vehicle which is not claimed by owner or third person, if the insurance company fails to take possession the vehicle may be sold

¹ 2002(10)SCC 283

as per the directions of the Court. The Court would pass such order within a period of six months from the date of production of said vehicle before the Court. In any case, before handing over possession of such vehicle, appropriate photograph of the said vehicle should be taken and detailed panchanama should be prepared”.

13. From this guidelines of Apex Court, it is crystal clear, in case of vehicle seized during investigation either produced before the Court or not produced, it is the duty of the criminal Court to exercise power under Sections 451 and 457 of The Code promptly and at the earliest, in case of vehicles seized they shall not be allowed to be kept at police stations for a long period, the Magistrate shall pass appropriate orders granting its custody on taking bond as well as security for return of the said vehicles. In case of unclaimed vehicles, if none comes forward seeking its custody, such vehicle may be sold as per the directions of the Court and such orders shall be passed within six months from the date of production of vehicle before the Court. This goes to show whenever a vehicle seized during investigation is produced or reported to the criminal Court, invariably the Court is expected to pass disposal order within six months from the date of its production, and shall not allow such vehicle to be kept idle at the police station.

14. The Court below in its impugned order has observed the offence against deceased Bhogadamma was committed in TATA Indica V2 LX car bearing No.KA 53 B 8565 on the way to Bangalore, in case its custody is granted to the petitioner, the evidence relating to offence may disappear from it and may also cause prejudice to the case of the respondent.

15. This Court has perused the case diary pertaining to Cr.No.144/2018 of Kadiri P.S. and as stated supra accused 1 to 3 are facing accusations of committing murder of deceased Bhogadamma and were already enlarged on bail, considering material part of the investigation in the case is completed, so also the case diary reflects material part of the investigation in the case is completed, this goes to show whether any evidence relating to the commission of offence was available in TATA Indica V2 LX car bearing No.KA 53 B 8565 probably it must have been collected by the respondent herein, in view of this at this stage the custody of the vehicle is granted to the petitioner, it is not going to cause any prejudice to the

respondent. Furthermore the vehicle is allowed to be kept in the custody of respondent till conclusion of enquiry on trial in the case which is going to take considerable time, it will be exposed to Sun, light and dust and possibility of getting the vehicle damaged cannot be ruled out. Having regard to these facts and circumstances and following guidelines of Apex Court in Sunderbhai Ambalal Desai case, the custody of the vehicle is granted to the petitioner on certain conditions it will meet both ends of justice, therefore impugned order of Court below is unsustainable in law, therefore the point is answered accordingly.

16. In the result, petition is allowed, order dated 10.12.2018 in Cr.M.P.No.2534/2018 in Cr.No.144/2018 is set aside and custody of TATA Indica car bearing No.KA 53 B 8565 is ordered in favour of the petitioner, on executing a personal bond for Rs.1,50,000/- with two sureties for like sum each to the satisfaction of Additional Judicial I Class Magistrate, Kadiri, on condition the petitioner shall deposit original R.C. of TATA Indica car bearing No.KA 53 B 8565 before Addl. Judicial I Class Magistrate, Kadiri, shall not change the complexion, colour and physical features and shall not alienate TATA Indica car bearing No.KA 53 B 8565 and shall produce the same as and when directed and the respondent shall take photographs of TATA Indica car bearing No.KA 53 B 8565 while handing over the same to petitioner and prepare a panchanama.

Dictated to Stenographer, transcribed by her, corrected and pronounced by me in open Court, on this the 2nd day of February, 2019.

Sd/- Junaid Ahmed Moulana
**SESSIONS JUDGE,
ANANTHAPURAMU**