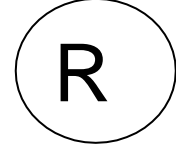


IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH



DATED THIS THE 18<sup>TH</sup> DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE ANIL B KATTI

**CRIMINAL REVISION PETITION NO. 100268 OF 2023 (397-)**

**BETWEEN:**

SRI. MUSTAFA S/O MAKTUMSAB RASOOLANAVAR

...PETITIONER

(BY SRI. SRINAND A PACHHAPURE, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA  
THROUGH DHARWAD RURAL POLICE STATION,  
NOW REPRESENTED BY STAET PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA, DHARWAD,  
BENCH AT DHARWAD.

...RESPONDENT

(BY SRI. PRAVEEN UPPAR, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED U/SEC. 397 R/W 401 OF CR.P.C. SEEKING TO SET ASIDE THE ORDER DATED 17.06.2023 PASSED BY THE COURT OF IV ADDL. SENIOR CIVIL JUDGE AND JMFC, DHARWAD IN DRPS CRIME NO. 138/2023 ON AN APPLICATION FILED U/SEC. 457 OF CR.P.C. TO EXTENT OF A CONDITION DIRECTING THE PETITIONER TO DEPOSIT RS.5,00,000/- TOWARDS SECURITY IS CONCERNED, MARKED AT ANNEXURE-A.

THIS CRIMINAL REVISION PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Revision petitioner/applicant-Sri. Mustafa s/o Maktumsab Rasoolanavar, feeling aggrieved by order passed by the trial Court on the file of IV Additional Senior Civil Judge and JMFC Court, Dharwad, dated 17.06.2023 ordering to deposit cash of Rs.5,00,000/- for release of interim custody of the tractor bearing registration No.KA.27/T-3132, preferred this revision petition.

2. Heard the argument of both sides.

3. On the strength of complaint filed by Mahesh S/o Somalingappa Pattanshetty criminal law was set into motion by registering case in Dharwad Rural P.S. in Crime No.138/2023 for the offences punishable under Sections 279, 283, 338, 304(A) of IPC. The tractor bearing registration No.KA-27/T-3132 and trailer bearing registration No.KA-25/EA-006146/2014-15 is seized and reported the seizer of the vehicle under P.F No.65/2023 dated 08.06.2023 to the Court. The applicant being the R.C. owner, filed application under Section 457 of Cr.P.C for releasing vehicle. The trial Court after hearing the arguments of both sides, by order dated 17.06.2023 has



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ordered to release the interim custody of the seized vehicle on depositing of Rs.5,00,000/- in Court towards the security in compliance of the Rule 232G of the Karnataka Motor Vehicle Rules and also to execute indemnity bond for the like sum amount subject to the conditions imposed by the trial Court.

4. Learned counsel representing the revision petitioner submits that there is no difficulty in offering the indemnity bond for like sum amount of Rs.5,00,000/- as ordered by the trial Court. The amount of Rs.5,00,000/- is ordered to be deposited in terms of Rule 232G of the Karnataka Motor Vehicle Rules is on higher side. Looking to the vehicle documents and photographs further in which condition vehicle was seized.

5. *Per contra*, learned HCGP seeks to justify the order of the trial Court on the premises that the vehicle has no any insurance coverage and there is prohibition in terms of Section 232G of the Karnataka Motor Vehicle Rules for release of vehicle involved in an accident.

6. There is no dispute that the seized tractor and trailer belongs to the applicant - R.C. owner. Therefore, trial Court has



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rightly ordered to release the interim custody of the seized tractor and trailer to the applicant R.C. owner.

7. Learned HCGP has contended that in terms of Section 397(2) of Cr.P.C revision petition itself is not maintainable as it is arising out of interim order passed by the trial Court . In support of such contention reliance is placed on the judgment of Madras High Court in ***K.BASHA VS. STATE THROUGH INSPECTOR OF POLICE CIVIL SUPPLIES, CID, TRICHY.*** In the said case before Hon'ble Madras High Court, the revision petition was filed challenging the order of trial Court in returning the petition filed under Section 451 of Cr.P.C. Therefore, it was held that revision petition against the order for "R.P. not received by this Court. Hence, return." is not amenable to the revisional jurisdiction. The said factual aspect is not involved in the present case.

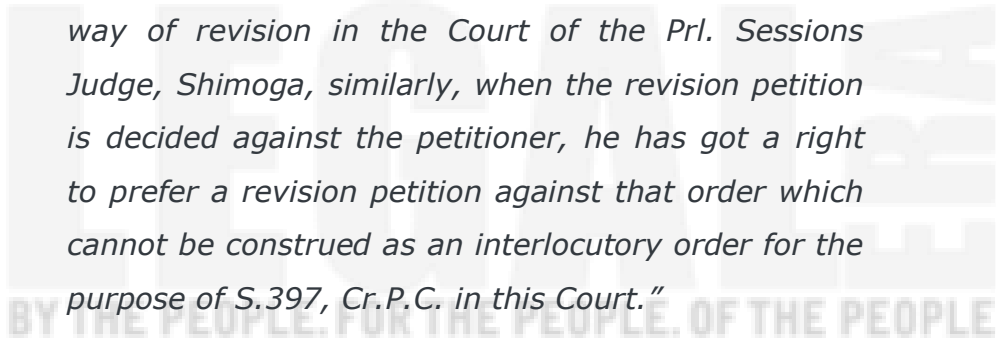
8. Learned HCGP has also relied another judgment of Hon'ble Kerala High Court in ***YADAV AGENCIES PVT. LTD VS. PHILOMINA AND ANOTHER*** reported in ***1985 CRL.L.J. 1798*** wherein it has been observed and held that an order passed

under Section 451 of Cr.P.C. is an interlocutory order and the revision petition is held to be not maintainable.

9. Learned counsel for the revision petitioner relied on the co-ordinate bench judgment of this Court in **T.NARAYANASWAMY VS. STATE AND OTHERS [1992 (4) KLJ 459]** wherein it has been observed and held that:

*"The order of the learned Magistrate granting interim custody of the vehicle to the petitioner cannot be said to be an interlocutory order and therefore the respondent No. 2 has challenged it by way of revision in the Court of the Prl. Sessions Judge, Shimoga, similarly, when the revision petition is decided against the petitioner, he has got a right to prefer a revision petition against that order which cannot be construed as an interlocutory order for the purpose of S.397, Cr.P.C. in this Court."*

10. Learned counsel for revision petitioner also relies on the subsequent decision of Hon'ble Madras High Court in **GANESA MOORTHY VS. STATE REP. BY THE INSPECTOR OF POLICE, KATTUMANNARKOIL [2019 CRL.L.J 1355 (MAD)]** wherein it has been observed and held in paragraph 8 as under:



"8. An application under Sec. 451 Cr. P.C. has to be decided by the Court after hearing the parties seeking the release of the property in question. The parties are allowed to adduce evidence and it is only after hearing them that the Court passes the order thereby giving the custody of the property to one of them who may be adjudged by the Court to be best entitled for the same. To say that such an order is revisable by the Court on the termination of the proceedings or in between is no reason to call the order interlocutory order. Till such an order is made, it is final between the parties and the Magistrate cannot arbitrarily or without proper justification change the same during the course of the proceedings. The argument of the petitioner that such an order becomes final on the termination of the proceedings cannot be accepted because even that order is subject to determination by a Civil court. Therefore, in the light of the decision of the Supreme Court in *Madhu Limayes case*, [1978 Cr.LJ 165 (supra)], it can be held that this kind of order is final between the parties deciding their entitlement to the property in question finally at that stage. Therefore such an order is necessarily subject to revision by the Court and revision against the same is competent before a Court of Session. The view which I have taken has a support from *Bharat Heavy Electricals Ltd. v. State* [1981 Cr.LJ 1529 (Andh Pra)] and *Ishar Singh v. The State of Punjab*, [1974 CrLJ 231). The argument of Sh. S.S. Kanwar on this count, therefore, fails and is rejected."



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Therefore, in view of the aforementioned judgments, it is evident that revision petition against the order passed in terms of Section 451 of Cr.P.C., is maintainable.

11. Indisputably, the seized vehicle has no any insurance coverage. Therefore, the trial Court is justified in invoking Rule 232-G of Karnataka Motor Vehicles Rules, 1989 and ordering to offer sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident. The object of this rule is to protect the interest of the claimants in a claim petition to satisfy the award, where there is no insurance policy to the vehicle. While asking for deposit of the amount for release of the vehicle to the interim custody even in terms of Rule 232-G of Karnataka Motor Vehicle Rules, the Court will have to take into consideration the probable value of the vehicle and the amount of security cannot be randomly fixed without any basis. In the present case, the seized vehicle as per the RC book is of 1997 model. As on the date of seizure on 08.06.2023 more than 26 years have been elapsed. Looking to the model of the seized vehicle and if the depreciation per year is calculated and also present condition of the seized vehicle as appearing in the photograph as per



Annexure-J to J3 are taken into consideration, it would be appropriate to modify the deposit of cash of Rs.2 lakhs in addition to offering the indemnity bond and surety bond for Rs.5 lakhs as ordered by trial Court. With these observations, proceed to pass the following:

**ORDER**

Revision petition filed by the revision petitioner is hereby partly allowed.

The condition imposed by trial Court for release of the interim custody of the seized vehicle calling upon the applicant to deposit an amount of Rs.5 lakhs is modified as under:

The applicant - RC owner has to deposit cash of Rs.2 lakhs in addition to executing indemnity bond and surety bond for Rs.5 lakhs as ordered by the trial Court.

The registry is directed to transmit the records with the copy of this judgment to trial Court.

**(Sd/-)  
JUDGE**