

# Mohammad Omar vs The State Of Andhra Pradesh on 18 January, 2021

**Author: Cheekati Manavendranath Roy**

**Bench: Cheekati Manavendranath Roy**

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

CRIMINAL PETITION No.186 OF 2021

ORDER:

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This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is directed against the order dated 19-12-2020 of the learned I Additional Junior Civil Judge-cum-XI Additional Metropolitan Magistrate at Anakapalli, whereby he has returned the petition filed under Section 445 of Cr.P.C. by the petitioner with an objection as to how the petition can be entertained as the property relates to a sessions case and as to how the cash surety can be accepted in lieu of solvent surety against the order of the Honourable High Court.

2. Heard learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent/State.

Since the respondents 2 to 7 are only the accused in Criminal Revision Case No.383 of 2020 and as they have nothing to do with the vehicle in question, as they are only added as proforma parties and no relief is claimed against them, no notice is required to be ordered to them.

3. A case in Crime No.716 of 2019 of Anakapalli Town Police Station was registered against the respondents 2 to 7 herein for the offences punishable under Sections 307, 353, 270, 273, 328 r/w 34 of the Indian Penal Code, 1860 and under Section 59 (1) of the Food Safety and Standards Act, 2006 (for short "F.S.S. Act"). Incidentally, during the course of investigation, police have seized one Maruti Car in connection with the said crime.

4. The petitioner, who is not an accused in the said crime and who is claiming to be the owner of the said car, filed a petition before the trial Court seeking interim custody of the said vehicle. The said petition came to be dismissed. Assailing the said order, the petitioner preferred revision before this Court in Criminal Revision Case No.383 of 2020 and this Court allowed the said Criminal Revision Case by its order dated 03-11-2020 and ordered that the Maruti Swift Car bearing No.KA 04 MG 1488 be given to the petitioner towards interim custody. The said interim custody of the vehicle was ordered on condition of executing a bond for Rs.1,00,000/- by the petitioner with one surety for a like sum to the satisfaction of the XI Additional Metropolitan Magistrate, Anakapalli.

5. Thereafter, the petitioner filed a petition before the trial Court under Section 445 of Cr.P.C. with a request to accept deposit of cash of Rs.1,00,000/- in lieu of furnishing surety for Rs.1,00,000/-. The said petition was returned by the impugned order dated 19-12-2020 with the following objection:-

"How this petition can be entertained since the property mentioned in this case relates to sessions case, how cash surety can be accepted in lieu of solvent person against to the order of Honourable High Court, hence returned."

6. Aggrieved by the said order returning the petition filed under Section 445 of Cr.P.C. seeking permission to deposit cash of Rs.1,00,000/- in lieu of furnishing the surety, this petition under Section 482 of Cr.P.C. is filed to give affect to the order passed by this Court granting interim custody of the vehicle to the petitioner and to secure the ends of justice in this petition.

7. The order returning the petition with the above objection, in the considered view of this Court, is legally unsustainable. Simply because, the property pertains to a sessions case, the Magistrate will not loose his jurisdiction to consider the request of the petitioner to deposit the cash in lieu of furnishing surety. Even though, this Court ordered in its order to furnish one surety for Rs.1,00,000/-, it does not afford any ground for return of the petition without entertaining the same which was filed under Section 445 of Cr.P.C. The Court has to first register the said petition and then it can pass an order according to its discretion. So, the very return of the petition on the above ground is erroneous and legally unsustainable. Further, the Court has ordered to furnish one surety for Rs.1,00,000/- only to ensure that the petitioner shall produce the vehicle before the trial Court as and when required. The said purpose can be achieved even by permitting the petitioner to deposit cash of Rs.1,00,000/- as a security.

8. Therefore, in the said facts and circumstances of the case, this Criminal Petition is allowed setting aside the impugned order dated 19-12-2020 returning the petition filed under Section 445 of Cr.P.C. on the above objection. The trial Court is directed to register the petition if it is otherwise in order and entertain the same and dispose of the same according to law within a week from the date of receipt of a copy of this order or from the date on which a copy of this order is produced before the trial Court by the petitioner.

Miscellaneous Petitions, if any pending, in this Criminal Petition, shall stand closed.

----- JUSTICE CHEEKATI  
MANAVENDRANATH ROY Date : 18-01-2021 ARR THE HON'BLE SRI JUSTICE CHEEKATI  
MANAVENDRANATH ROY CRIMINAL PETITION No.186 OF 2021 Date : 18-01-2021 ARR