

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.MC.No. 491 of 2015 ()

**IN CMP 12531/2014 of J.M.F.C.-I,NEDUMANGAD
CRIME NO. 1346/2014 OF VENJARAMOODU POLICE STATION ,
THIRUVANANTHAPURAM**

PETITIONER(S):

**ALRASHAD
S/O ABDUL BASHEER
AL FALEEH, PALLIMUKKU, KALLARA**

**BY ADVS.SRI.SANU.S.PANICKER
SRI.S.SUDHEER**

RESPONDENT(S):

**STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM (CRIME NO. 1346/2014 OF
VENJARAMOODU POLICE STATION
THIRUVANANTHAPURAM DISTRICT**

R1 BY ADV. PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A1: TRUE COPY OF THE C.M.P. NO.12531/2014 FILED BY THE PETITIONER BEFORE THE MAGISTRATE COURT DT. 9.12.2014

ANNEXURE A2: TRUE COPY OF THE ORDER DATED 29.12.2014, PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, NEDUMANGADU

ANNEXURE A3: TRUE COPY OF THE PETITION PREFERRED BY THE PETITIONER BEFORE THE SUB DIVISIONAL MAGISTRATE DATED 31.10.2014

ANNEXURE A4: TRUE COPY OF THE ORDER DATED 18.11.2014 PASSED BY THE SUB DIVISIONAL MAGISTRATE

ANNEXURE A5: TRUE COPY OF THE DECISION IN SUNDERBHAI AMBALEL DESAI VS STATE OF GUJARAT CASE REPORTED IN 2002(10) SCC 283

ANNEXURE A6: TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT IN CRL.MC NO.212/2010 DATED 01.02.2010

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No.491 of 2015

Dated this the 13th day of March, 2015.

O R D E R

The petitioner herein claims to be the owner of the vehicle No.KL-16/G-7499, involved crime No.1346 of 2014 of the Venjaramoodu Police Station, registered under Section 174 Cr.P.C in connection with an incident of suicide by one Shameer. Deceased Shameer was the driver of the said vehicle at the relevant time. Of course, it is not known why the autorikshaw was seized by the police in that case. This is not a case involving any definite crime. It is submitted that there are some suspicions regarding the commission of suicide by Shameer. But the police has not so far reached anywhere, and the crime still continues under Section 174 Cr.P.C, as a case of unnatural death. Nobody has a case that the vehicle was used for the commission of any offence in any manner. Just because the deceased was the driver of an Autorikshaw, the police mechanically and unnecessarily seized the vehicle, for reasons known to the Sub Inspector alone. Anyway, he omitted to report the fact of seizure to the Judicial

Magistrate having jurisdiction. Instead of reporting the fact to the learned Magistrate, the seizure was reported to the Sub Divisional Magistrate. Pending the proceedings, the petitioner approached the learned judicial First Class Magistrate Court-I, Nedumangad with C.M.P No.12531 of 2014 for interim custody of the vehicle under Section 451 Cr.P.C. The learned Magistrate dismissed the application on the ground that orders regarding the vehicle will have to be passed by the Sub Divisional Magistrate. The said order dated 29.12.2014 is under challenge.

2. On hearing both sides and on a perusal of the materials I find that the police has no justification at all for the seizure of the Autorikshaw. It is not known why the vehicle was seized in a case of unnatural death or suicide. It is not known how the police would justify the seizure. Nobody has got a case that the vehicle is involved in the commission of any offence, or that it was used by anybody for the commission of any offence. The Sub Inspector who seized the vehicle will have to explain the necessity and legality of seizure, when complaint comes against him, and if anybody proceeds against him in civil or criminal action.

3. Section 102(1) Cr.P.C provides that any police officer may seize any property which may be alleged or suspected to have

been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. I fail to understand how the Sub Inspector would justify the seizure under Section 102(1) Cr.P.C. Anyway, Sub Section 3 to Section 102 Cr.P.C provides that every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction. Section 3 Cr.P.C provides that any reference, without any qualifying words, to a Magistrate, shall be construed, unless the context otherwise requires, (i) in relation to an area outside a metropolitan area as a reference to a Judicial Magistrate and (ii) in relation to a metropolitan area, as a reference to a metropolitan Magistrate. Thus there cannot be any doubt that once a property is seized by the police officer under Section 102(1) Cr.P.C, he will have to report the fact of seizure forthwith to the Judicial Magistrate having jurisdiction. In this case, the fact of seizure was not reported to the Judicial Magistrate. This is a culpable omission on the part of the Sub Inspector. He will have to report the fact of seizure immediately to the learned Magistrate.

4. The learned Magistrate disallowed the request in this case on the ground that the property is not before him, and that the Sub Divisional Magistrate will have to pass orders. This cannot be accepted. It is settled that report of seizure in any form to a judicial Magistrate will amount to report as provided under Section

102(3) Cr.P.C, once the seizure is reported by way of a complaint, and interim custody of the property is sought by the complainant, the learned Magistrate will have to call for a report, and cause to production of property before court. Here I find that the police has no justification at all for the seizure of the vehicle, and the police has also no reason or justification for not reporting the fact of seizure to the learned Judicial Magistrate having jurisdiction. Now it is submitted by the learned Public Prosecutor that request for custody stands declined by the Executive Magistrate on the ground that the petitioner is not the registered owner. What the judicial authority looks into in a claim under Section 451 or 457 Cr.P.C is as to who is the right person to claim interim custody. The court will have to examine the entire facts and decide whether the claimant is the right person to claim interim custody of the vehicle. Just because the registration certificate does not stand in his name, his request for interim custody cannot be declined. If it is found on materials that he has right to possess the vehicle, and if he is the right person to claim custody under Section 451 Cr.P.C, the property can be released to him very well, subject to final orders in the main proceeding.

In the result, this Crl.M.C is disposed of as follows:

- a. The Station House Officer is directed to report the fact of seizure immediately to the learned Judicial Magistrate having jurisdiction.

b. Once report of seizure is made, the petitioner can make a fresh application for interim custody of the vehicle before the learned Magistrate.

When such an application comes, it shall be judiciously disposed of as observed above, and if the petitioner is the right person to claim custody, it can be released to him on appropriate reasonable conditions.

P.UBAID,
JUDGE

sab