

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

Cr1.MC.No. 779 of 2015

AGAINST C.M.P NO. 103/2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, NEYYATINKARA

CRIME NO. 1881/2014 OF NEMOM POLICE STATION , THIRUVANANDAPURAM

PETITIONER:

AJAYAKUMAR,
S/O.CHANDRAN, KALABHAVAN,
KALLINGAVILAKAM,
POOVAR.P.O.

BY ADVS.SRI.P.A.AHAMMED
SRI.THOUFEEK AHAMED

RESPONDENT/RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

R1 BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 779 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A- COPY OF RC BOOK OF PETITIONER'S VEHICLE.

ANNEXURE B- COPY OF THE BILL DATED 27.12.2014.

ANNEXURE C- COPY OF THE PETITION IN CMP NO.103/2015 FILED BY
PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
NEYATTINKARA.

ANNEXURE D- COPY OF THE COMMON ORDER IN CMP NOS.103/2015 &
104/2015 DATED 16.1.2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT-I, NEYATTINKARA.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.779 of 2015

Dated this the 8th day of April, 2015

O R D E R

The petitioner herein claims to be the registered owner of the vehicle KL-01-AM-3400. The said vehicle with full load of rice contained in 80 sacks was seized by the Sub Inspector of Police, Nemon on finding that it was in fact rice meant for public distribution. On the basis of seizure crime No.1881/2014 was registered under the Essential Commodities Act and the Kerala Rationing Order framed thereunder. Pending investigation, two applications came before the Judicial First Class Magistrate Court I, Neyyattinkara; one for interim custody of the vehicle and the other for interim custody of the rice. C.M.P No.103/2015 was filed by the petitioner herein under Section 451 of the Code of Criminal Procedure for interim custody of the said vehicle. C.M.P No.104/2015 was filed by the person who claims the rice. The two applications were heard together by the learned Magistrate, and a common order was passed on 16.1.2015, disallowing both the claims. The petitioner is aggrieved by the dismissal of his application in C.M.P No.

103/2015.

2. On hearing both sides, I find that interim custody of the vehicle can be given to the petitioner herein on appropriate reasonable conditions, subject to the result of the confiscation proceedings and the confiscation orders passed by the District Collector under the Essential Commodities Act. In such matters the prayer for interim custody cannot be declined solely on the ground that the properties are liable for confiscation under the Essential Commodities Act. Of course, the right authority to initiate confiscation proceeding is the District Collector, but the right authority to grant interim custody of the property under the Code of Criminal Procedure is the Judicial Magistrate having jurisdiction over the area. Any orders passed by the judicial authority under Section 451 of the Cr.P.C will be subject to the confiscation orders passed under the law by the District Collector, who is the authorised officer under the Essential Commodities Act. Of course as regards the rice involved in the case there cannot a direction at this stage granting interim custody. The petitioner is not in fact the claimant, and his claim is only for the vehicle in his name. It appears that the other claimant has not challenged dismissal of

his application C.M.P No.104/2015. Anyway, if the petitioner is the registered owner of the vehicle, or if he is otherwise entitled to claim interim custody, the vehicle can be released to him on appropriate conditions.

In the result, this Criminal Miscellaneous Case is allowed. The impugned order disallowing C.M.P No.103/2015 is hereby set aside, and the petition is ordered to be revived for disposal afresh. The court below is hereby directed to release the vehicle to the petitioner on appropriate reasonable conditions, if he is the registered owner, or otherwise entitled to claim custody, subject to the confiscation proceedings and confiscation orders passed by the District Collector under the Essential Commodities Act.

**P.UBAID
JUDGE**

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