

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

Crl.MC.No. 1098 of 2015 ()

AGAINST THE ORDER IN CMP 14399/2014 of J.M.F.C.-I, NEYYATINKARA
CRIME NO. 515/2014 OF VIZHINJAM POLICE STATION , THIRUVANANDAPURAM

PETITIONER(S)/PETITIONER/ACCUSED:

TAJUDEEN, AGED 55 YEARS
S/O.ALIKANNU, MEPPoor VEEDU, AYAMON
PAZHAYAKUNNIMEL, KILIMANOOR
CHIRAYINKILTHIRUVANANTHAPURAM.

BY ADV. SRI.SHAJIN S.HAMEED

RESPONDENT(S)/RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE
VIZHINJAM POLICE STATION
REPRESENTED THROUGH THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
02-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 1098 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A PHOTOCOPY OF THE ORDER DATED 24/04/2014 OF THE DISTRICT
COLLECTOR, THIRUVANANTHAPURAM

ANNEXURE-B PHOTOCOPY OF THE LETTER DATED 02/04/2014 ISSUED BY THE
EXECUTIVE ENGINEER

ANNEXURE-C CERTIFIED COPY OF THE ORDER DATED 11/12/2014 IN
CMP.14399/2014 OF THE JUDICIAL 1ST CLASS MAGISTRATE COURT-
II, NEYYATTINKARA.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.1098 of 2015**  
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Dated this the 2nd March, 2015

ORDER

The petitioner herein is involved in a prosecution brought under Sections 3 and 7 (1) (a) (ii) of the Essential Commodities Act on the allegation that he made an attempt to divert two full loads of tar purchased under bill. The two bills as per which the petitioner purchased tar are now before the trial court. He made an application under Section 451 of the Code of Criminal Procedure as C.M.P. No.14399 of 2014 for interim custody of the two invoices. The court below dismissed the application on the ground that the documents are required for trial. The said order dated 11.12.2014 is under challenge.

2. It is submitted that the petitioner has already produced the certified copy of the documents in court. It is also submitted that the petitioner or the other co-accused will not at any stage question the validity or genuineness of the documents. Admittedly, there is no allegation that it is a forged or tampered document. The prosecution wants

the document only to prove purchase of tar by the petitioner under proper bill. If there is no dispute regarding the genuineness of the invoice, and if purchase can be proved by the certified copy of the document and other evidence, the original can be returned to the petitioner. His grievance is that his claim for amount as contractor will be cleared by the P.W.D only on production of the original invoice. No doubt, much prejudice will be caused to him if the invoices are not released. If there is no dispute regarding the genuineness of the documents, and if the petitioner and the other accused will not challenge the genuineness of the documents, the purchase of tar under invoice can be proved by the prosecution by the certified copy produced by the petitioner. The accused will have to file proper affidavit before the learned Magistrate, that they will not in any circumstance, or at any stage of the trial, dispute the correctness or genuineness of the invoice. When such an affidavit is filed, the original invoice can be returned to the petitioner. Accordingly, the petitioner can make a fresh application before the court below along with the required

affidavit, and the certified copy of the documents (if not already produced).

With the above observations, this Crl.M.C is closed.

**Sd/-
P.UBAID
JUDGE**

ma

/True copy/

P.S to Judge