

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

Crl.MC.No. 1827 of 2015

**ORDER DATED 12-02-2015 IN CMP.305/2015 IN CC 2660/2014 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, KUTHUPARAMBA**

CRIME NO. 655/2014 OF PERAVOOR POLICE STATION, KANNUR
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PETITIONER(S)/DE FACTO COMPLAINANT:

**SHAJI M.K. @ MANDARAKANDI SHAJI, AGED 38 YEARS,
S/O.BALAN, MANDARAKANDI HOUSE, MANATHANA AMSOM,
PERAVOOR DESOM, PERAVOOR P.O., IRITTY TALUK,
KANNUR DISTRICT, PIN-670 673.**

**BY ADVS.SRI.ABU MATHEW
SRI.AJU MATHEW
SRI.ABHILASH MATHOOR**

RESPONDENT(S)/PETITIONER/ACCUSED AND STATE:

- 1. P.V.VINOD, AGED 36 YEARS,
S/O.VARGHESE, PANTHAPLAKKAL HOUSE, VELLARVALLI AMSOM,
THONDIYIL DESOM, IRITTY TALUK, THONDIYIL P.O.,
KANNUR DISTRICT, PIN- 670 673.**
- 2. STATE OF KERALA,
THROUGH SHO PERAVOOR POLICE STATION, KANNUR DISTRICT,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM KOCHI-682 031.**

**R1 BY ADV. SRI.SATHEESHAN ALAKKADAN
R2 BY PUBLIC PROSECUTOR SRI.N.SURESH**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
09-07-2015 ALONG WITH CRL.MC.1831/2015 THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A-1 : TRUE COPY OF AGREEMENT DATED 11-04-2014 ENTERED INTO BETWEEN PETITIONER AND 1ST RESPONDENT.

ANNEXURE A-2 : TRUE COPY OF THE RC BOOK IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728.

ANNEXURE A-2(A) : TRUE COPY OF THE FITNESS CERTIFICATE IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728.

ANNEXURE A-2(B) : TRUE COPY OF THE INSURANCE POLICY IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728.

ANNEXURE A-2(C) : TRUE COPY OF THE ALL INDIA TOURIST PERMIT IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728.

ANNEXURE A-2(D) : TRUE COPY OF THE FORM 29 IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

ANNEXURE A-2(E) : TRUE COPY OF THE FORM 30 IN RESPECT OF THE VEHICLE BEARING REGISTRATION NO.KL-58-J-7728 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

ANNEXURE A-3 : TRUE COPY OF AGREEMENT DATED 22-04-2014 ENTERED INTO BETWEEN PETITIONER AND 1ST RESPONDENT.

ANNEXURE A-4 : TRUE COPY OF COMPLAINT IN CMP.NO4949 OF 2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUTHUPARAMBA.

ANNEXURE A-5 : TRUE COPY OF THE FIR IN CRIME NO.655 OF 2014 OF PERAVOOR POLICE STATION.

ANNEXURE A-5(A): TRUE COPY OF THE FINAL CHARGE IN CRIME NP.655 OF 2014 OF PERAVOOR POLICE STATION.

ANNEXURE A-6 : TRUE COPY OF CMP NO.5120 OF 2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUTHUPARAMBA.

ANNEXURE A-7 : TRUE COPY OF CMP NO.305 OF 2015 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE, KUTHUPARAMBA.

ANNEXURE A-8 : CERTIFIED COPY OF THE COMMON ORDER PASSED IN CMP NO.305 OF 2015 AND CMP NO.5120 OF 2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KUTHUPARAMBA.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 9th day of July, 2015.

ORDER

These two Crl.M.Cs are filed under Sec.482 of the Cr.P.C by the same petitioner to challenge the common order on Anx-A8 dated 12.2.2015 rendered in C.M.P.Nos.5120/2014 and 305/2015 in Crime No.655/2014 of Station House Officer, Peravoor, Kollam. The case of the petitioner herein is that he had purchased the vehicle Toyota Innova Car bearing Reg.No.KL-58-J-7728 from the 1st respondent after paying some amount towards sale consideration and agreed to remit EMI. That the 1st respondent handed over the possession of the said vehicle along with originals of the documents in question to the petitioner that subsequently, as per Anx-A3 agreement between the petitioner and 1st respondent the vehicle was given on rent basis to the 1st respondent for plying the vehicle as taxi service as per which the 1st respondent had agreed to remit EMI of Rs.18,800/- to the finance company and to pay Rs.6200/- towards rent of the vehicle to the petitioner. That the 1st respondent failed to remit the EMI and agreed rent in terms of Anx-A3

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agreement and that it is in the circumstances that the petitioner herein has filed Anx-A4 private complaint before the Judicial First Class Magistrate court, Kuthuparamba, which led to the institution of Anx-A5 Crime No.655/2014 of Peravoor Police Station, for offences under Secs.406 & 420 IPC. Then the petitioner filed Anx-A6 application under Sec.451 of the Cr.P.C seeking interim release of the vehicle which is said to be allegedly involved in the instant crime. The 1st respondent filed Anx-A7 application for the same relief of interim custody of the vehicle. The court below heard both applications together and passed Anx-A8 common order, whereby Anx-A7 preferred by the 1st respondent was allowed and Anx-A6 application filed by the petitioner was dismissed. It is these common order that is under challenge.

2. Heard Sri.Abu Mathew, learned counsel for the petitioner and the learned Public Prosecutor appearing for the 2nd respondent-State of Kerala.

3. The court below has noted that the 1st respondent is the owner as per the Registration Certificate of the vehicle issued by the competent authority of the Motor Vehicles Act. More particularly, the court below has clearly found that possession of the vehicle has already been transferred to the 1st respondent herein as per the agreement dated

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22.4.2014. The court below noted that essentially, the grievance of the petitioner herein is that the 1st respondent is not remitting the loan instalment or paying the monthly rent. The court below cannot be found fault with in taking the view that the right of the petitioner to release the arrears of rent from the 1st respondent by seeking appropriate remedy in civil proceedings. Since the possession of the vehicle is already transferred to the 1st respondent, there is presumption under Sec.10 of the Evidence Act that a person who is in actual physical possession of the property is the owner of such property unless contrary is proved. In this case also, the court below found that the vehicle was seized from the possession of the 1st respondent. In this view of the matter, the court below has not committed any illegality or impropriety in granting interim custody of the vehicle to the 1st respondent. Accordingly, there is no merit in this petition. Hence both the Crl.M.Cs stand dismissed without prejudice to the right of the petitioner herein to initiate such other appropriate remedies in respect of his grievances. It is made clear that the findings and observations in this order is only in the context of dispute as to who should be granted interim custody of the vehicle in terms of Sec.451 Cr.P.C and so the said findings and observations in this order shall not in any way trammel or influence the

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pending criminal proceedings and its outcome or the civil proceedings that may be pending or that may be initiated by the parties concerned.

With these observations and directions, these Crl.M.Cs stand finally disposed of.

ALEXANDER THOMAS,
Judge.

bkn/-