

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 21ST DAY OF APRIL 2015/1ST VAISAKHA, 1937

Cr1.MC.No. 1887 of 2015

AGAINST THE ORDER IN CMP NO. 518/2015 OF CHIEF JUDICIAL
MAGISTRATE'S COURT, KOZHIKODE DATED 17-03-2015.

CRIME NO.16/13 OF THE TOWN POLICE STATION, KOZHIKODE (CB
CID CR.NO.23/2013)

PETITIONER/PETITIONER/ACCUSED:

P.L.SUNIL KUMAR, AGED 52 YEARS,
S/O.LATE LAKSHMANAN,
THE DIRECTOR AND AUTHORISED SIGNATORY,
DAEHSAN TRADING INDIA PRIVATE LIMITED NO 1-A,
B-BLOCK, 114, SIR THYAGARAJA ROAD,
T NAGAR CHENNAI 600 017, TAMIL NADU,
REPRESENTED BY V.G NARAYANAN NAIR,
S/O.M.P GOPALA PILLAI, "VAISHNAVAM",
SREEMOOLA NAGARAM,
ALUVA, ERNAKULAM DISTRICT, KERALA STATE.

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENT/RESPONDENT/COMPLAINANT/STATE:

1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.

2. THE DISTRICT POLICE CHIEF,
CBCID, KOZHIKODE CITY, KOZHIKODE DISTRICT-670001.

BY ADDITIONAL D.G.P. SRI. K.I. ABDUL RASHEED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 21-04-2015, ALONG WITH CRMC. 2250/2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 1887 of 2015

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE-A1: TRUE COPY OF THE FIRST INFOIRMATION REPORT
NO 16 DATED 4-1-2013.

ANNEXURE-AII TRUE COPY OF THE INTERIM ORDER IN WPC NO
3126 OF 2015 DATED 13-2-2015.

ANNEXURE-AIII TRUE COPY OF THE ORDER DATED 17-3-2015 IN
CMP NO 518/15 IN CRIME NO 16/13 OF TOWN POLICE STATION
(CBCID CR NO 23/2103).

RESPONDENT(S) ' EXHIBITS

NIL

//true copy//

P.S. to Judge

K. HARILAL, J.

Crl.M.C. Nos.1887 & 2250 of 2015

Dated this the 21st day of April, 2015

ORDER

These Criminal Miscellaneous Cases arose from an order passed in C.M.P.No.518/15 in Crime No.16/13 of Town Police Station (CB CID.Cr.No.23/ 2013), on the files of the Chief Judicial Magistrate's Court, Kozhikode. Crl.M.C. No.1887 of 2015 is filed by the applicant in the above C.M.P. and Crl.M.C.No.2250 of 2015 is filed by the State of Kerala, represented by the respondent therein. The parties are referred to as in the impugned order. The applicant, a Private Limited Company, along with its Directors, are the accused in the above crime registered and investigated by C.B.C.I.D. EOW III, Malappuram, alleging commission of the offences punishable under Section 4, 5 and 6 of the Prize, Chits

and Money Circulation (Banning) Act, 1978 (for short 'the Act'). During the course of investigation, the warehouse, wherein the merchandise with connected business literature were stored, of the accused company was sealed and the key had been produced before the court below. The merchandise now stored in the warehouse is approximately valued to Rs.1,11,59,140/-. The applicant had approached this Court by filing W.P.(C) No.3126 of 2015 seeking the permission to carry on business and also for interim custody of the articles involved. As regards interim custody of the articles, this Court directed the applicant to move the court below, invoking jurisdiction under Sec.451 of the Cr.P.C. and as regards the other relief, the petitioner was permitted to carry on the business. In compliance with the said direction, the petitioner filed the above C.M.P. under Sec.451 of the Cr.P.C. seeking interim custody of the articles.

2. The respondent filed objection contending that the merchandise kept in the warehouse are proceeds of the crime and they cannot be released and if the same are released to the applicant, they will continue the business in violation of the provisions in the said Act.

3. After considering the rival contentions, the court below allowed the application on conditions, which are given below:

(1) The applicant shall execute security bond, with 2 solvent sureties, for Rs.1.25 crores in favour of this Court and shall produce title deed relating to immovable property of the applicant or sureties worth that amount, which fact shall be supported with a certificate issued by the revenue authority, offering the property as security for release of the merchandise and commercial literature kept in the warehouse, till an order u/s 452

Cr.P.C. is passed in respect of those items or till the disposal of the main case.

(2) The title deed shall not be released until disposal of main case and if it is found that the items released as per this petition are liable for confiscation then the value of the same of the same i.e., Rs.1,11,59,140/- shall be realised by proceeding against the immovable property offered as security.”

4. The legality and propriety of the order granting interim custody of the articles, on conditions, to the applicant is under challenge in Crl.M.C.No.2250 of 2015 filed by the State. Crl.M.C.No.1887 of 2015 is filed by the applicant on the ground that the conditions imposed to grant interim custody are illegal, irrational and improper.

5. The main ground projected in Crl.M.C.No.1887 of 2015 is that the products/merchandise which are kept in the warehouse are not the Material Objects or

the articles seized in the proceedings which are pending before the court below. When the business premises was locked and taken into custody by the authorities, the products/merchandise also came into the custody of the respondent and subsequently by producing the key of the warehouse before the court, the articles which are kept in the warehouse came into the custody of the court. The merchandise now stored in the warehouse and valued to Rs.1,11,59,140/- are not included in the seizure mahazar also. So, it cannot be treated as seized articles or material objects. The court below, without considering the fact that the properties which are kept in the warehouse are not the articles seized by the police, imposed stringent conditions for releasing the said articles.

6. The main ground in Crl.M.C.No.2250 of 2015 is that the court below failed to consider the fact that the goods have been procured from the proceeds of

the illegal money circulation activities and they cannot be considered as products, which had been procured in the course of a legal business; and thereby the articles are not liable to be given to the applicant, in interim custody.

7. I have heard Sri. George Poonthottam, the learned counsel for the petitioner and Sri. K.I. Abdul Rasheed, the learned Additional Director General of Prosecutions.

8. The learned counsel for the petitioner drew my attention to Ext.R1(2) seizure mahazar produced by the applicant in Crl.M.C.No.2250 of 2015 and submits that the articles seized by the police are specifically mentioned in the seizure mahazar and the police can insist the custody of the said articles only. The articles, which are kept in the warehouse do not find a place in the seizure mahazar. Thus, the articles which are kept in the warehouse are not taken into custody so far; but they are unable to continue the

business on the reason that the said warehouse is locked by the police and the key was produced before the court below.

9. The learned Additional Director General of Prosecutions submits that if the petitioner is allowed to carry on the business, he will continue the business in violation of the provisions of the Act. The learned Additional Director General of Prosecutions further admitted that there is no material in the possession of police to show the description of the articles which are kept in the warehouse, which now stands locked by the police. It is also admitted that these articles are not Material Objects, in the case.

10. I have given my anxious consideration to the rival submissions made at the Bar.

11. The questions to be considered are, can the court below be justified in granting interim custody of the articles which are kept in the warehouse to the applicant in view of the jurisdiction and power under

Sec.451 of the Cr.P.C.? Are the conditions imposed reasonable, proper and justifiable?

12. Prima facie, I find that this Court allowed the applicant to carry on business and directed to approach the trial court to get interim custody of the articles which are kept in the warehouse, by Annexure-A2 order in Crl.M.C.No.1887 of 2015, passed by this Court in W.P.(C) No.3126 of 2015 and this order has not been challenged by the State of Kerala so far. So, indisputably, the applicant has given right to carry on the business.

13. The learned counsel for the petitioner cited a decision reported in *Sunderbhai Ambalal Desai v. State of Gujarat* [(2002) 10 SCC 283] and drew my attention to the guidelines given by the Apex Court in the above decision for releasing the seized articles under interim custody. Going by the decision, it is seen that the Apex Court has severely criticised the practice of keeping articles indefinitely under the

custody of court, awaiting trial and laid down clear guidelines to release the articles under interim custody or to sell or dispose the articles, if the articles are subject to speedy and natural decay. The learned Additional Director General of Prosecutions miserably failed to convince the court as regards the purpose for which the police insisted for the custody of the articles worth more than Rs.1 crore, when the said articles had not been seized by the police and no document has been prepared or produced before the trial court or this Court to show the description of the articles, which are kept in the warehouse. Ext.R1(1) seizure mahazar in Crl.M.C.No.2250 of 2015 shows that a few articles alone had been seized by the police. The remaining articles happened to be in the custody of court, on the reason that the articles are kept in the warehouse and key is in the custody of the court.

14. Going by the Act, I find that there is no

provision for confiscation of the articles used for the commission of the offences or seized from the premises, where the offence was committed. So, the articles can be used as evidence to prove the alleged offence against the accused only. If that be so, I am of the opinion that no purpose will be served by keeping the said articles in the custody of the court, if sufficient precaution or alternative measures can be taken to prevent the evidence being lost, altered or destroyed as provided in the decision in *Sunderbhai Ambalal Desai v. State of Gujarat* [2002 (10) SCC 283]. The relevant paragraphs of the above decision are extracted below:

“5. S. 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording

such evidence as it thinks necessary;

(3) if the property is subject to speedy and natural decay, to dispose of the same.

6. It is submitted that despite wide powers, proper orders are not passed by the Courts. It is also pointed out that in the State of Gujarat there is Gujarat Police Manual for disposal and custody of such articles. As per the Manual also, various circulars are issued for maintenance of proper registers for keeping the muddamal articles in safe custody.

7. In our view, the powers under S.451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in number of matters. In *Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another*, (1977 (4) SCC 358), this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:-

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is sought to speedy or natural decay. It may be other compelling reasons also which

may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the Police Officers in every case where it has taken

cognizance”. (emphasis supplied)

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security”.

15. It is significant that here the articles are subject to speedy and natural decay. In the light of the above decision, I am also of the opinion that the articles, except the articles which are specifically mentioned in the seizure mahazar, can be released to the petitioner after preparing a detailed and proper Panchanama of the articles and obtaining security bond, particularly, when the articles are neither

Material Objects nor seized articles in the prosecution proceedings against the applicant.

16. In the above view of the matter, I find that there is no illegality or impropriety in the findings whereby the court below granted interim custody of the articles to the applicant.

17. Coming to the reasonableness of conditions imposed for releasing the articles, I have already held that the production of the articles may be required as evidence only to prove the offence against the applicant and no purpose would be served by keeping the articles in the custody of the court, in the absence of the provisions to confiscate the articles allegedly used for commission of the offence or found in the premises where the offence was committed. In that view of the matter, I find that the conditions imposed by the court below are excessive, unreasonable and disproportionate with the purpose for which the said articles are required. Therefore, in supersession of the

conditions imposed by the court below, the articles shall be released to the applicant on compliance of the following conditions:

(i) The person who receives the key shall produce proper authorization given by the company to take possession of the articles from the custody of the court.

(ii) The court below shall prepare a detailed and proper *panchanama* including value, of the articles which are kept in the warehouse. The preparation of the *panchanama* will be at the expense of the applicant and the applicant shall facilitate all the requirements for the same to the satisfaction of the court below, in accordance with the interim orders to be passed by the court below.

(iii) The photograph of the entire

articles shall be taken and the same shall be kept with negatives as part of prosecution records.

(iv) The applicant shall not conduct any business activity using the said articles or any other articles in violation of any of the provisions in the Prize, Chits and Money Circulation (Banning) Act, 1978.

(v) The applicant shall execute a security bond for an amount equal to the value of the entire articles, with two solvent sureties each for the like sum, for the realisation of the said amount from their immovable properties, if the court finds that the value of the articles is realisable from the accused, to the satisfaction of the Chief Judicial Magistrate's Court, Kozhikode.

(vi) The court below shall release

the key of the warehouse to the applicant on satisfactory compliance of the above conditions, within a period of one month from the date of receipt of a copy of this order and the release of the key shall be deemed to be release of all items kept in the warehouse while sealing the same by the Investigating Officer.

(vii) The court below is at liberty to pass necessary interim orders for the effective and proper execution of the above conditions.

Crl.M.C.No.1887 of 2015 will stand allowed to the above extent and Crl.M.C.No.2250 of 2015 will stand dismissed.

Sd/-

(K. HARILAL, JUDGE)

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//true copy// P.S. to Judge