

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 12TH DAY OF MAY 2015/22ND VAISAKHA, 1937

Crl.MC.No. 2465 of 2015 ()

**CRIME NO. 411/2015 OF PALA POLICE STATION , KOTTAYAM
CMP NO.1448/2015 OF J.F.C.M. COURT, PALA**

PETITIONER(S)/PETITIONER:

**SAJEEVU.K AGED 39 YEARS
S/O. KUMARAN A.K., VELIKKAKATHU HOUSE
PULIYANNOOR P.O., PALA, KOTTAYAM DISTRICT**

**BY ADVS.SRI.P.P.THAJUDEEN
SRI.MANSOOR.B.H.**

RESPONDENT(S)/COMPLAINANT/STATW:

**STATE OF KERALA
REP BY:PUBLIC PROSECUTOR
HIGH COURT OF KERALA 382031 (THROUGH STATION
HOUSE OFFICER PALA POLICE STATION
KOTTAYAM DIST)**

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12-05-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 2465 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A: TRUE COPY OF THE REGISTRATION CERTIFICATE BEARING
REGISTRATION NO:KL 35.E 6858 ISSUED BY THE SUB REGIONAL TRANSPORT
OFFICE. PALA**

**ANNEXURE B: CERTIFIED COPY OF THE ORDER DATED 08.4.2015 OF JUDICIAL FIRST
CLASS MAGISTRATE COURT, PALA IN C.M.P.NO:1448/2015 IN CRIME NO:411/2015 OF
PALA STATION, KOTTAYAM**

RESPONDENT(S)' EXHIBITS

NIL.

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///True copy///

P.S. to Judge

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2465 of 2015

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Dated this the 12th day of May, 2015

O R D E R

The prayer in this Crl.M.C. filed under Sec.482 of the Cr.P.C. is to set aside Anx.-B order dated 8.4.2015 of the Judicial First Class Magistrate's Court, Pala, in Crl.M.P.No.1448/2015 in Crime No.411/2015 of Pala Police Station, Kottayam and to direct the learned Magistrate concerned to grant interim custody of the vehicle to the petitioner, by imposing reasonable conditions.

2. The petitioner is the accused in Crime No.411/2015 of Pala Police Station, registered for offences under Secs.55(a) and (i) of the Kerala Abkari Act. The gist of the case is that the accused was found to be in possession of 2.3 ltrs of Indian Made Foreign Liquor (IMFL) and was found to be selling the liquor kept in the auto rickshaw in a road margin, thereby committed the offences alleged against the petitioner. It is stated that the petitioner is the accused as well as the registered owner of the said auto rickshaw referred to in the impugned Anx.-B order.

3. During the pendency of the investigation, the petitioner moved an application seeking interim custody of the vehicle before the learned Magistrate by invoking the provisions under Sec.457 of the Code of Criminal Procedure. But the learned Magistrate by the impugned Anx.-B order rendered on 8.4.2015 has dismissed the application on the ground that since the vehicle was already produced before the authorised officer as contemplated under the provisions of the Abkari Act, the jurisdiction of the court is ousted. It is this order that is under challenge.

4. Heard Sri.P.P.Thajudeen, learned counsel appearing for the petitioner and the learned learned Public Prosecutor.

5. The learned counsel for the petitioner would submit that this Court in catena of cases as in the decision rendered on 25.3.2015 in Crl.M.C.No.446/2015 and identical cases has held that the dismissal of similar case by the court below in that case on the ground that the Deputy Commissioner of Excise is the authority to release the vehicle is not a proper ground for rejection of such application and that the judicial authority vested with power to consider and release the vehicle under Sec.457 of the Cr.P.C. is bound to exercise discretion and take a judicial decision in the

matter. That the judicial authority cannot leave things within his province to the executive authority and that the court below will have to pass a judicial order in accordance with the provisions under Sec.457 of the Code of Criminal Procedure and that any such order that may be passed by the court below will be subject to the confiscation order passed under law.

6. In this view of the matter, this Court in Crl.M.C.No. 446/2015 had allowed the Crl.M.C. and set aside the impugned order therein and directed to release the vehicle to the petitioner on appropriate reasonable conditions, if the petitioner is the registered owner of the vehicle or otherwise entitled to claim custody, of course subject to the orders that may be passed under the Kerala Abkari Act.

7. In the instant case the ground for rejection as evident from Anx.-B is that as the vehicle seized by the Police has already been produced before the Deputy Commissioner of Excise, Kottayam, along with relevant documents, the jurisdiction of the court below is ousted, etc. The said ground is untenable. Accordingly, the impugned Anx.-B order is set aside. The matter is remitted back to the court below and the court below concerned

shall consider the matter afresh after hearing the petitioner in the light of the principles laid down by this Court in Crl.M.C.No.446/2015. Orders in this regard will be passed within a period of two weeks from the date of production of a copy of this order.

With these observations and directions, the Crl.M.C. stands finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge