

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Crl.MC.No. 2555 of 2015 ()

CRIME NO. 295/2009 OF CENTRAL POLICE STATION, ERNAKULAM

PETITIONER :

**P.M.IBRAHIM,
AGED 42 YEARS, S/O.MYTHEEN,
PARAKKAL PUTHENPURAYIL HOUSE, KALOOR
ERNAKULAM DISTRICT, PIN-682017.**

**BY ADVS.SRI.SALIM V.S.
SRI.S.SHANAVAS
SRI.H.NUJUMUDEEN
SRI.P.V.JEEVESH
SMT.K.P.SHISU**

RESPONDENT(S) :

- **1. THE MANGER,
UNION BANK OF INDIA,
M.G.ROAD BRANCH,
ERNAKULAM-682 035.**
- 2. STATE OF KERALA,
THROUGH CIRCLE INSPECTOR OF POLICE
CENTRAL POLICE STATION, ERNAKULAM
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, PIN-682031.**

**R1 BY ADV. SRI.A.S.P.KURUP, SC
R2 BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 2555 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE A1 : TRUE COPY OF THE REGISTRATION CERTIFICATE OF
 KL-07 BK 3451 TOYOTA INNOVA VEHICLE.**

ANNEXURE A2 : TRUE COPY OF THE COMMON ORDER DATED 2-6-2014.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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ALEXANDER THOMAS, J.
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Crl.M.C No.2555 of 2015
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Dated this the 20th day of July, 2015

O R D E R

The petitioner seeks interim custody of the vehicle (Toyota Innova Car) bearing registration No. KL 07 BK 3451 seized in connection with original Crime No. 198/2009 registered by the Thripunithura, Hillpalace Police Station (re registered as Crime No.295/2009 of Central Police Station, Ernakulam) involving the offence u/s 467, 471, 420 of IPC. It is stated that the petitioner is the bonafide purchaser of the said vehicle from the accused in the Crime (one Sri. Bobby Abraham Titus) who made the petitioner believe that the said vehicle was purchased by him without obtaining any finance from the bank and that as per the registration certificate there was no hypothecation. Accordingly, the petitioner entered into an agreement on 15.01.2009 for purchase of the vehicle for sale consideration of Rs.8.5 lakhs and that he had paid Rs.7 lakhs from the date of agreement itself. That when the original RC Book of the vehicle was handed over to the petitioner on 24.1.2009, the balance sale consideration of Rs.1.5 lakhs was paid

by him to Sri. Bobby Abraham Titus. Later, the respondent Union Bank of India complained to the Police that the said vehicle was hypothecated to the said bank and that the accused had sold the said vehicle to the petitioner herein. On account of this complaint by the respondent Union Bank of India that the impugned crime was registered initially at Thripunithura Hillpalace police station and was later re-registered at the Ernakulam Central Police Station. The petitioner was originally arrayed as accused No.2 in the above said crime. Later, after investigation the police has been convinced that the petitioner was the bonafide purchaser and that he had no role in the impugned criminal proceedings and accordingly the police had deleted the petitioner from the accused array and now the sole accused in the above said crime is the aforesaid Sri. Bobby Abraham Titus who is said to be absconding.

2. The interim custody of the vehicle was given to the bank by the court below which was challenged by the petitioner in Crl.M.C filed before this Court which led to Anx.A-2 order dated 2.6.2014 wherein this Court upheld the grant of interim custody of the vehicle to the respondent, Union Bank of India.

3. There was a direction in Anx-A-2 order by this Court

that the trial should be completed within six months time. Since the trial could not be completed presumably due to the aspect that the accused was absconding, the petitioner has come up before this Court with the present Crl.M.C praying for grant of the custody of the vehicle to the petitioner.

4. During the course of the submissions in this case, the petitioner and the respondent Union Bank of India through their respective counsel have come to an understanding as to the grant of custody of the vehicle. It was agreed by both sides that this Court may direct the Assistant Motor Vehicle concerned to make an assessment of the value of the vehicle in question and that on the petitioner paying the said full value so assessed by the AMVI to the Bank, the Bank will not raise any other claim for custody of the vehicle and that the custody of the vehicle could be granted to the petitioner by this Court. This submission was made by the respondent, Union Bank of India, as the Public Prosecutor also submitted on instructions of the Investigating Officer that the petitioner is no longer an accused in the impugned crime and that the investigation has been convinced that the petitioner happened to be only a bonafide purchaser of the vehicle in question and that

the sole accused in the said crime is the aforestated Sri. Bobby Abraham Titus who is said to be absconding. Accordingly, this Court had directed the Assistant Motor Vehicle Inspector concerned to conduct a valuation of the vehicle as per order dated 28.05.2015 by this Court in this case. Accordingly, the Assistant Motor Vehicle Inspector concerned had submitted a statement which has been produced along with memo dated 6.7.2015 of the Government Pleader wherein it is stated that the officer has conducted the valuation of the Toyota Innova Car in question and has assessed the value at Rs.5.5 lakhs as per the present condition of the vehicle. This valuation is done on 9.6.2015 and copy of the such statement has been made available to both sides for perusal.

5. Indisputably petitioner is a bonafide purchaser of the vehicle in question. The petitioner has been deleted from the accused array as per the investigation conducted in this Crime. The accused is said to be absconding and in spite of the specific directions issued by this Court in Anx-A2 order rendered as early as on 2.6.2014 to complete the trial in the impugned crime within 6 months, no progress could be achieved for the completion of the trial. The dispute of custody earlier was only between the petitioner

and the respondent Union Bank of India. The only submission now made by the learned Standing counsel appearing from the respondent, Union Bank of India is that the valuation of the vehicle shown by the Motor Vehicle Inspector is slightly on the lower side and that according to the bank the valuation should not be less than Rs.5.75 lakhs. The learned counsel for the petitioner submits that even though the valuation done by the AMVI is on the higher side compared to the valuation done by the Insurance Company, but that the petitioner is fully willing to pay of the entire account of Rs. 5.75 lakhs now being claimed by the bank. Accordingly, in the interest of justice, it is ordered that on the petitioner paying off the entire amount of Rs.5.75 lakhs to the respondent, Union Bank of India within 3 weeks from today, then the custody of the vehicle could be granted to the petitioner. However, the petitioner should undertake before the court below that he will not alienate, transfer or encumber the vehicle in any manner, till the conclusion of the trial and that he will not dismantle the vehicle also during the said period. The video graphs/photographs of the vehicle may be taken, if necessary. If there is undue delay in completion of the trial, it will be open to the petitioner to approach this Court at the appropriate

time. It is made clear that the respondent Union Bank of India will not have any other claims of the vehicle in the question and the bank can appropriate the above said amount of Rs.5.75 lakhs in full and final settlement of the transaction. All claims and counter claims of the petitioner and the respondent Bank pertaining to this vehicle, will stand finally settled on the payment of the above said amount.

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

sd/-

sab

ALEXANDER THOMAS, JUDGE