

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Crl.MC.No. 1505 of 2014

[AGAINST THE ORDER IN CMP 9098/2013 of J.M.F.C.-I, ATTINGAL
DATED 19-12-2013
AGAINST THE ORDER IN CMP 9099/2013 of J.M.F.C.-I, ATTINGAL
DATED 19-12-2013
CRIME NO. 1315/2013 OF ATTINGAL POLICE STATION, THIRUVANANDAPURAM]

PETITIONERS (S) / PETITIONERS:

1. SABEENA
W/O.KAHARUDEEN, SHAHANA BUILDING, CHULIMANOOR (P.O),
ANAD VILLAGE, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM DISTRICT.
2. SHAHANSHA
S/O.KAHARUDEEN, SHAHANA BUILDING, CHULLIMANOOR (P.O)
ANAD VILLAGE, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.LIJU. M.P

RESPONDENTS (S) / RESPONDENTS & STATE:

1. KAHARUDEEN, AGED 47,
MUHAMMED SALI, NIZA MANZIL, PALLIMUKKU,
ALAMKODU VILLAGE, THIRUVANANTHAPURAM
DISTRICT.
2. STATE OF KERALA
REPRESENTED BY SUB INSPECTOR OF POLICE,
ATTINGAL POLICE STATION, THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682 031.

R1 BY ADV. SRI.M.DINESH

R2 BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 1505 of 2014 ()

APPENDIX

PETITIONER(S) ' EXHIBITS:

ANNEXURE-A: TRUE COPY OF THE REGISTRATION CERTIFICATE
OF THE VEHICLE BEARING REGISTRATION NUMBER KL-21-E-3625

ANNEXURE-B: TRUE COPY OF THE COMPLAINT DATED
7.11.2013 ADDRESSED TO JOINT REGIONAL TRANSPORT OFFICER, NEDUMANGAD

ANNEXURE-C: TRUE COPY OF THE FIR DATED 18.11.2013 IN
CRIME NO.617/13 OF VALIYAMALA POLICE STATION, THIRUVANANTHAPURAM
DISTRICT.

ANNEXURE-D: TRUE COPY OF THE PETITION IN CMP
NO.9099/13 IN CRIME NO.1315/13 OF ATTINGAL POLICE STATION.

ANNEXURE-E: TRUE COPY OF THE REPORT DATED 6.12.2013
OF THE S.I OF POLICE, ATTINGAL POLICE STATION.

ANNEXURE-F: CERTIFIED COPY OF THE COMMON ORDER DATED
19.12.2013 PASSED IN CMP NO.9098/2013 AND CMP NO.9099/13 BY THE COURT
OF THE JUDICIAL FIRST CLASS MAGISTRATE - I, ATTINGAL.

RESPONDENT(S) ' EXHIBITS

NIL

-true copy-

P.S.TO JUDGE

MARY JOSEPH, J.

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Crl.M.C. No.1505 of 2014

CR

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Dated this the 29th day of October, 2015

JUDGMENT

The petitioners herein are the petitioners in C.M.P No.9099 of 2013 in Crime No.1315/2013 of Attingal Police Station. The 1st respondent is the husband of the 1st petitioner and the father of the 2nd petitioner. The petitioners seek to quash Annexure F common order passed by the Judicial First Class Magistrate Court – I, Attingal (for short 'the court below') in C.M.P No.9098 of 2013 and 9099 of 2013, directing release of a Nippon Toyota ETIOS car bearing Registration No.KL-21-E-3625 to the petitioner in C.M.P No.9098 of 2013, who is the first respondent herein.

2. The averments in the petition are to the following effect.

The 1st petitioner was the owner in possession of a Nippon Toyota ETIOS car bearing Registration No.KL-21-E-3625. The copy of the certificate of registration conferring ownership upon him is produced along with this petition as Annexure A. The

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vehicle was purchased with the money sent by the 2nd petitioner, who is none other than the son of the 1st petitioner who is employed abroad. The 2nd petitioner decided to quit his employment abroad and return to the native place. He wanted the registered ownership of the vehicle changed to his name. Therefore, the 1st petitioner entrusted the 1st respondent to do the needful. The 1st respondent obtained signatures of the 1st petitioner in certain documents. But, instead of changing the ownership of the vehicle in the name of the 2nd petitioner, the 1st respondent managed to get the registration of the vehicle changed into his name. Therefore, it is contended by the petitioners that the 1st respondent has cheated them. The 2nd petitioner realised the factum of cheating on verification of the R.C Book at a later point of time and thereupon he approached the Joint R.T.O, Nedumangad with a complaint on 07.11.2013, the true copy of which is Annexure B appended with this petition. A civil suit was filed by the 2nd petitioner as O.S No.908 of 2013 before the Munsiff's Court, Nedumangad and that is pending. It is the allegation of the petitioners that though they have preferred complaint alleging cheating by the 1st respondent, that was not

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acted upon by the police. Therefore, they were constrained to file a private complaint before the court below and got Crime No.617/2013 registered against the respondents, the true copy of which is Annexure-C appended with this petition.

3. In the meantime, a private complaint was lodged by the 1st respondent before the Judicial First Class Magistrate Court – I, Attingal alleging forceful removal of the car from his custody by the petitioners, based on which Crime No.1315/2013 was registered by the Attingal Police. Pursuant to that the custody of the vehicle was taken by the 2nd respondent. The 2nd petitioner was also manhandled by the Police at the behest of the 1st respondent and accordingly, complaint was lodged by the 1st petitioner before the State Police Complaints Authority and that is pending.

4. Pending investigation, petitions have been filed by the 2nd petitioner and the 1st respondent respectively as C.M.P Nos.9099 of 2013 and 9098 of 2013 before the Judicial First Class Magistrate Court –I, Attingal under Section 451 Cr.P.C seeking to get interim custody of the vehicle, the true copy of which is Annexure D appended with this petition. The report filed by the 2nd respondent

in those petitions, true copy of which is appended with this petition as Annexure E.

5. After hearing the rival parties, the court below allowed C.M.P No.9098 of 2013 and dismissed C.M.P No.9099 of 2013, the true copy of the common order is appended with this petition as Annexure F. Accordingly, the Nippon Toyota ETIOS car bearing Registration No.KL-21-E-3625 was ordered to be released to the first respondent. The aggrieved petitioners in C.M.P.No.9099/2013 have approached this Court in the captioned Crl.M.C. seeking to quash Annexure F order in exercise of the inherent jurisdiction with which this Court is empowered under Section 482 Cr.P.C.

6. Sri. Liju M.P. and Sri.M.Dinesh, the respective counsel representing the respective parties in person and the learned Public Prosecutor representing the 2nd respondent were heard.

7. The contention of the learned counsel for the petitioners was that the 2nd petitioner was the true owner of the vehicle but, ownership of the vehicle got changed in his name by the 1st respondent, playing fraud upon them. According to him, the vehicle was purchased by the 1st petitioner utilising the fund contributed by

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the 2nd petitioner and it was entrusted with the 1st respondent to get its ownership changed in the name of the 2nd petitioner. According to him, to the utter dismay of the first petitioner, the 1st respondent by exercising fraud, got his own name entered into the certificate of registration. She came to know it and accordingly a complaint was lodged and got Crime No.617/2013 registered on its basis. According to him, a suit was filed by the second petitioner (son) raising all the contentions and that is also pending. But, the Judicial First Class Magistrate Court-I, Attingal without conducting any inquiry into those aspects, passed Annexure F order. According to him, if an inquiry was held, an order in the nature of Annexure F would not have been passed by the Magistrate in favour of the 1st respondent.

8. Per contra, the learned counsel for the 1st respondent contended that based on a valid certificate of registration that stands in his name in respect of the vehicle, Annexure F order was passed granting interim custody to him and therefore, grounds do not exist to invoke inherent jurisdiction under Section 482 Cr.P.C. to quash Annexure F order.

9. In view of the rival contentions raised in the course of the argument, this Court has to see whether the impugned order was the outcome of an erroneous appreciation of the materials placed for its consideration. Indisputably, a certificate of registration is existing in the name of the 1st respondent. The allegation of the petitioners that the same was obtained by the 1st respondent falsely, by playing fraud, may have basis. But, that could not be identified on a mere look at the certificate of registration. Allegation of fraud is something difficult to be established and undoubtedly, an indepth inquiry is required.

10. Indisputably, the court receiving an application under Section 451 Cr.P.C. has to hold an inquiry based on materials available before it to arrive at a decision about release of the vehicle in interim custody. In the case on hand, a certificate of registration has been produced by the 1st respondent before the court and it appears valid in all respects except for the averments of fraudulent obtainment of the same by the petitioner. Admittedly of the petitioners, the inquiry based on the allegation of foul play in the matter of obtainment of the certificate of registration is pending in a

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legal forum. In Ashok Kumar v. State of Bihar and others [(2001) 9 SCC 718), the Apex Court found the purpose behind invocation of power under Section 451 Cr.P.C. as two fold. Those are the non-requirement to keep the vehicle in the compound of the court indefinitely for a very long time till the final disposal of the case and the advisability to entrust it to the registered owner on behalf of the court under certain conditions. The relief sought in the case is interim custody of the vehicle and the object behind incorporation of Section 451 in the Cr.P.C. is to empower the court to pass orders for the custody or disposal of the property temporarily during an inquiry or trial.

11. Section 451 Cr.P.C. is extracted hereunder to understand the nature of the authority vested on a court by the said provision.

“451. Order for custody and disposal of property pending trial in certain cases – When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such

evidence as it thinks necessary, order it to be sold or otherwise disposed of.

For the purposes of this section, “property” includes –

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

12. From the words in use in the section, “.....the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial.....”, it is clear that the court is vested with a discretion to pass an order as it thinks fit for the proper custody of the vehicle. Therefore, the inquiry contemplated under Section 451 Cr.P.C., is not an elaborate, indepth inquiry.

13. On the contrary, a prima facie satisfaction about the ownership of the vehicle sought to be released in interim custody alone is required, for which a certificate of registration is a fundamental document. There may be foul play or fraudulent act behind the obtainment of it by the person who produces the same

and that may be within the knowledge of the party alleging it but, a court empowered to exercise the power under Section 451 Cr.P.C. is not required to conduct a detailed inquiry into it as the same is not envisaged thereunder. It is pertinent to note that the order intended by the provision is only of interim nature and not final.

14. In the case in question, it is evident from the materials furnished that separate proceedings, based on the circumstances in which the certificate of registration was obtained by the 1st respondent in his name are pending consideration of various forums, both civil and criminal. The question relevant for consideration of the Magistrate concerned in a context wherein claims of the nature are raised by several parties was to see, which one among them stands in a better pedestal, as far as the ownership of the vehicle is concerned.

15. The learned Magistrate in the case on hand conducted inquiry in the applications filed by the second petitioner as well as the first respondent and based on the true copy of the certificate of registration produced by the first respondent along with his application, found him to have a better claim than the first

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petitioner, who failed to produce any authoritative documents to establish his ownership. It is true that the question regarding the true ownership of the vehicle is pending consideration of a court of law and that would be decided therein. But, the Magistrate while considering the application seeking interim custody is not required to wait for the result of those pending proceedings. The relief sought under Section 451 Cr.P.C. is of interim nature and the purpose behind it being dual as stated in Ashok Kumar's case supra, the same is required to be granted in a hasty manner. The very purpose behind incorporation of the provision in the Cr.P.C. would be defeated, if the Magistrate in seizin of an application sits to hold a detailed inquiry into it or wait till the result of the civil court comes. The Magistrate in the case on hand has considered the rival claims put forth by the parties expeditiously and the common order under challenge, allowing the claim made by the first respondent was passed. Undoubtedly, the order was passed in favour of the respondent based on a prima facie satisfaction of the certificate of registration, the copy of which is produced by him. The order under challenge is not tainted with perversity,

impropriety or illegality as alleged by the petitioner and accordingly,
is not liable to be interfered with.

In the result, Crl.M.C. is dismissed.

MARY JOSEPH, JUDGE

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