

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYASHTA, 1937

Crl.MC.No.2784 of 2015

SC NO.602/2007 of I ADDITIONAL ASSISTANT SESSIONS COURT,KOZHIKODE.

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PETITIONER/IST ACCUSED:

**RAJEEV P.K,S/O.KUMARAN,AGED 50 YEARS,
PINNIKKAL HOSUE,PADI P.O.,KODALI,THRISSUR.**

BY ADV.SRI.P.K.ANIL

RESPONDNET/COMPLAINANT/STATE:

- 1. SUB INSPECTOR OF POLICE,
KASABA POLICE STATION,KOZHIKODE-673004.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM-682031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

Crl.MC.No.2784 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE I:TRUE COPY OF THE JUDGMENT OF THE IST ADDITIONAL
ASSISTANT SESSIONS JUDGE,KOZHIKODE IN S.C.602/2007.**

ANNEXURE II:TRUE COPY OF THE SEIZURE MAHAZAR DATED 8.9.2005.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2784 of 2015

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Dated this the 12th day of June, 2015

ORDER

The prayer in the above captioned Criminal Miscellaneous Case is for a direction to the 1st respondent Sub Inspector of Police, Kasaba Police Station, Kozhikode (investigating officer concerned) to return the currency seized from the possession of the petitioner as per the mahazar dated 8.9.2005 by PW-11 in S.C.No.602/2007 on the file of the 1st Additional Assistant Sessions Judge, Kozhikode.

2. The petitioner and four others were arrayed as accused in Crime No.264/2005 of Kasaba Police Station, Kozhikode for offences punishable under Sec.395 read with Sec.34 of the I.P.C. The 1st accused in the crime absconded and the case against him was split up. The petitioner herein was accused No.2 in the crime and accused Nos.3, 4 and 5 faced trial in S.C.No.602/2007 on the file of the 1st Additional Assistant Sessions Judge, Kozhikode. In the Sessions Case, the petitioner herein, who was A-2 in the crime, was

arrayed as A-1 and accused Nos. 3, 4 and 5 in the crime were arrayed as accused Nos.2, 3 and 4 respectively in the Sessions case. After trial, the Assistant Sessions Court concerned as per Anx.1 judgment dated 19.12.2011 in the S.C.No.602/2007 acquitted all the accused in that sessions case. Ext.P-7 dated 8.9.2005 is said to be the seizure mahazar concerned in respect of the seizure of currency amount of Rs.70,000/- from the petitioner. According to the petitioner, though Ext.P-7 seizure mahazar was marked, seized currency amount of Rs.70,000/- was not produced as a material object and that though the trial as against him was concluded in his favour by acquittal, he is not in a position to move the court below concerned for making an application for final release of the said article (currency of Rs.70,000/-) seized from him as per Ext.P-7 by PW-11. It is in the light of these aspects that the petitioner has made the aforementioned prayer in this Crl.M.C.

3. The learned Public Prosecutor was requested to get instructions in the matter and thereupon, the investigating officer concerned has furnished written instructions to the Public Prosecutor. The Public Prosecutor, on instructions from the respondent investigating officer, has submitted that an amount of

Rs.74,000/- was seized from A-2 in the above crime (petitioner) and the same was submitted to the Court of Judicial First Class Magistrate-III, Kozhikode on 19.9.2005 and the same was accepted by that court by item No.182/05 dated 19.9.2005. That though the trial as against the four accused including the petitioner (A-2 to A-5 in the crime), who are A-1 to A-4 in the Sessions Case in S.C.No. 602/2007) concluded and as the case against the absconding accused No.1 was split up, the same is now numbered as Committal Proceedings as C.P.No.45/2007 on the file of the said Magistrate's court. Therefore, it is submitted by the learned Prosecutor, on instructions, from the investigating officer that since the criminal trial process in respect of the said crime has not yet been lawfully finalised in the manner known to law, there is no question of entertaining any application for final release or custody of any material object as the trial in respect of A-1 in the crime is yet to be completed. Faced with this situation, Sri.P.K.Anil, learned counsel for the petitioner submitted that, according to his instructions, the seized currency amount has not yet been produced as a material object during the earlier trial and that therefore, there is no question of now producing the said seized article as a material

object in the trial for the other absconding accused and that therefore he is entitled to make application for final release or custody of the seized article.

4. This Court is not in a position to adjudicate this issue as it need be adjudicated only if a cause of action in that regard has really fructified as a factual reality. The whole premise of the petition in this case is on the foundation that the amount of Rs.70,000/- seized as per Ext.P-7 mahazar was not produced before the court below. This appears to be factually wrong in the light of the submission of the Public Prosecutor that the seized amount is not Rs. 70,000/- but Rs. 74,000/- and that the same was accepted by the jurisdictional Magistrate concerned as item No.182/2005 on 19.9.2005.

5. In the circumstances, it is for the parties to work out their remedies in appropriate proceedings in appropriate court and this Court need not adjudicate on such issues at this stage of the matter. Accordingly, this Crl.M.C. is closed.

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Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

Cr1.M.C.2784/15

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