

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

Crl.MC.No. 2788 of 2015

CRIME NO. 170/2015 OF PALARIVATTOM POLICE STATION , ERNAKULAM

PETITIONER(S)/DEFACTO COMPLAINANT:

SWAMINATHA KAMATH, AGED 61 YEARS,
S/O.LATE S.GOVINDA KAMATH, MATHRU KRIPA HOUSE,
VYAS NAGAR, KARNAKKODAM KARA, PALARIVATTOM.

BY ADV. SRI.T.D.ROBIN

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY SI OF POLICE,
PALARIVATTOM POLICE STATION
, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA-682031.
2. BABU @ KOTTARAM BABU,
S/O.KALI, NELLIKKADU VEEDU, KANJAMPARA,
THEEPOKAL WARD, KOLIYAKKODU VILLAGE,
THIRUVANANTHAPURAM-695100..
3. SASIDHARAN @ PAPPADAM SASI, S/O.MANIKANDAN NAIR,
THARATTAVILA SARASWATHY MANDIRAM VEEDU,
PALLICHAL VILLAGE, THIRUVANANTHAPURAM-695100.
4. AKBAR SHAH, AGED 38 YEARS,
S/O.MUHAMMED BASHIR, CHARUVILA VEEDU, PALAMKONAK
KEEZHATTINGAL VILLAGE, CHIRAYINKEEZHU TALUK.
5. SAIDALI, AGED 41 YEARS,
S/O.MUHAMMED, PUTHUVALPURAYIDATHIL VEETIL, TC 47/1034,
PATHEKKAR, NEDUMANGADU VILLAGE, THIRUVANANTHAPURAM-695105.
6. SASIKALA,
W/O.PAPPADAM SASI @ SASIDHARAN, SARASWATHY BHAVANAM,
MALAYINKEEZHU, THIRUVANANTHAPURAM,
NOW RESIDING AT C/O.MEERA, VILAVOORKKAL PANCHAYATH,
MANGATTUKADAVU BHAGATH, TRIVANDRUM-695100.

R1 BY PUBLIC PROSECUTOR SMT.S. HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2788 of 2015

APPENDIX

PETITIONERS' ANNEXURES

**ANNEXURE 1: CERTIFIED COPY OF THE ORDER IN CMP.NO.622/15 IN CRIME
NO.170/15 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I
ERNAKULAM, DATED 23/3/15.**

RESPONDENTS' ANNEXURE

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2788 of 2015

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Dated this the 22nd day of June, 2015

ORDER

The petitioner, who is the victim of the alleged offence of theft, approached the court below by filing Criminal Miscellaneous Petition No.622/2015 in Crime No.170/2015 of Palarivattom Police Station to get interim custody of the gold articles stolen from him, by the accused, which were recovered by the Police during the course of investigation. The court below allowed the plea of the petitioner herein for the interim custody of the gold articles, with the following conditions:

- “i) Petitioner shall execute bond for Rs.1 lakh with two solvent sureties each for like sum for production of the articles.
- ii) Petitioner shall produce the articles before the court in good condition as and when required.
- iii) Petitioner shall produce bank guarantee for Rs.1 lakh as security.
- iv) Photographs of the articles signed by the petitioner and counter signed by the S.H.O. and accused shall be produced.
- v) Mahazar of the articles shall be prepared.”

The petitioner being aggrieved by the impugned condition No.iii of

Anx.1 order, which insisted that the petitioner shall produce bank guarantee for Rs.1 lakh as security, he has filed this Criminal Miscellaneous Case. The only prayer made in this Crl.M.C. is for a direction to delete the impugned condition No.iii of Anx. I order.

2. Heard Sri.T.D.Robin, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. It is common ground that the petitioner is in fact the defacto complainant, who is the victim of the crime of theft involved in this crime. The stolen gold articles were recovered by the Police and the court below has directed to give interim custody of the said gold articles to the petitioner. Condition No.i thereof mandates that the petitioner shall execute bond for Rs.1 lakh with two solvent sureties each for like sum for production of the articles. Other conditions are there in terms of conditions Nos.ii, iv and v, which are made by the court below as sufficient safeguards for the interim custody order, until the stage for consideration of the requisite application for final custody of the articles in question. Therefore, to insist that the petitioner shall produce bank guarantee for Rs.1 lakh as security over and above condition No.i that the petitioner shall

execute bond for Rs.1 lakh with two solvent sureties and other conditions, it may not be a proper exercise of discretion by the court below. Accordingly, the impugned condition No.iii in Anx.I order will stand set aside and deleted. It is made clear that all the other conditions in the impugned Anx.I order will remain unaltered.

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

sd/+
ALEXANDER THOMAS, JUDGE
///True copy///

P.S. to Judge