

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

Crl.MC.No. 3013 of 2015 ()

**CMP NO. 6352/2014 IN CC NO. 603/2014
OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR**

PETITIONER :

**SANOOP V.K.,
S/O.VIJAYAN, VALIYA VALAPPIL THEKKEPURAIL
VELLIKULANGARA, ORKATERY P.O.,
KOZHIKODE DISTRICT.**

BY ADV. SRI.SUNNY MATHEW

RESPONDENT(S) :

**1. THE STATION HOUSE OFFICER
PAYANGADI POLICE STATION,
KANNUR DISTRICT- 672 001.**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 04-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 3013 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

- ANNEXURE-A1:** TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.219/2013 OF THE CHOMBALA POLICE STATION.
- ANNEXURE-A2:** TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.362/2013 OF THE PAYANGADI POLICE STATION.
- ANNEXURE-A3:** TRUE COPY OF THE ORDER DATED 1.7.2013 PASSED BY THE JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYANNUR IN C.M.P 2624/2013.
- ANNEXURE-A4:** TRUE COPY OF THE ORDER DATED 25.10.2013 IN CRL.M.C. 3255/2013 PASSED BY THIS HONOURABLE COURT.
- ANNEXURE-A5:** TRUE COPY OF THE FINAL REPORT IN C.C. 603/14 OF THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR.
- ANNEXURE-A6:** TRUE COPY OF THE REPORT SUBMITTED BY THE IST RESPONDENT IN C.M.P 6352/2014.
- ANNEXURE-A7:** TRUE COPY OF THE ORDER DATED 6.1.2015 PASSED BY THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS PAYYANNUR IN C.M.P 6352/2014 IN C.C. 603/2014

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

=====

Crl.M.C.No.3013 of 2015

=====

Dated this the 4th day of June, 2015

O R D E R

The petitioner herein is the registered owner of mini tipper lorry bearing Registration No.KL-18H-5639. According to the Petitioner, the said vehicle was stolen by someone on 03/04/2013 and the petitioner immediately complained about this which led to the registration of Crime No.219/2013 of Chombala Police Station. Later, on 13/05/2013 the Sub Inspector of Police, Payangadi, has seized the above said vehicle owned by the petitioner while the same was used by someone else for illegal transportation of river sand which led to the registration of Crime No.362/2013 of Payangadi Police Station. Initially, the Petitioner was also arrayed as a co-accused in the said Crime No.362/2013. When the vehicle was produced before the court below, the petitioner filed an application under Section 451 of Cr.P.C. seeking the release by way of interim custody of the vehicle. By Annexure -A3 order dated 01/07/2013, the Judicial First Class Magistrate Court, Payyannur allowed the said

request on stringent condition such as deposit of 30% of the value of the vehicle and furnishing bank guarantee for the balance amount. The Petitioner filed Crl.M.C.3255/2013 before this Court challenging the condition imposed in Annexure –A3 order and this Court as per Annexure–A4 order dated 25/10/2013 in Crl.M.C.3255/2013 had permitted the petitioner to furnish immovable property as security. Accordingly, the petitioner had deposited title deeds of his property and got the interim custody of the vehicle.

2. It is stated that the 1st respondent, Station House Officer, Payangadi Police Station, has completed the investigation in Crime No. 362/2013 and submitted a final report concluding clearly that accused 1 to 4 therein had committed theft of the petitioner's vehicle, committed forgery and used the said vehicle for illegally transporting the river sand. That the petitioner has been deleted from the accused array and has been made charged as witness No.3 in the above case and the case is now pending only against the four accused persons as C.C.No.603/2014. As the petitioner was removed from the accused array and was made a charge witness, he filed a C.M.P.No.6352/2014 before the court below praying that the

condition under which the vehicle was released to him insisting for furnishing title deed of his property as security may be modified suitably and that the title deed of his property may be returned to him. The 1st respondent Station House Officer did not oppose the prayer of the petitioner. That by impugned Annexure-A7 order dated 06/01/2015 the learned Magistrate had dismissed the said prayer. It is in the light of these aspects the petitioner filed this Crl.M.C. with the following prayers:

- "1) Quash Annexure A7 order dated 06.01.2015 passed by the Court of the Judicial First Class Magistrate, Payyannur in C.M.P.6352/2014 in C.C.603/2014.
- 2) To pass an order allowing C.M.P.6352/2014 in C.C.603/2014.
- 3) To pass an order directing the Judicial First Class Magistrate, Payyannur to release the title deeds of the property of the petitioner on conditions which this Honourable Court may deem fit to impose."

3. Heard Sri.Sunny Mathew learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

4. The Public Prosecutor was specifically requested to get instructions as to whether the petitioner, after completion of investigation and submission of final report, was deleted from the accused array and was made a charge witness and whether the prosecution opposes the present prayer of the petitioner. The

prosecutor on instructions submitted that the said submission of the petitioner that he was removed from the accused array and that he is now made only as a charge witness is correct and that the Station House Officer concerned filed a report before the court below stating that the court may pass appropriate orders on the above prayer of the petitioner as evident from paragraph 2 of the impugned Annexure-A7 order. It is common ground that the impugned condition was imposed at a time when the prosecution thought it fit to include the petitioner in the accused array of the crime concerned. Now, it is indisputable that the investigation has concluded and that the petitioner was not made an accused and that he has been deleted from the accused array and has been only listed as charge witness No.3. Petitioner's specific case is that his vehicle was stolen for which another crime (Crime No.219/2013) of Chombala Police Station was already got registered at his instance much before the registration of the instant crime. So his case that his stolen vehicle was misused by somebody in the commission of offence in the latter crime assumes importance. This observation is made merely for the determination of the limited issue raised in this interim custody proceedings. Therefore, to insist that he

should continue to deposit his title deeds by way of furnishing immovable security as a condition for interim release of the vehicle, which even according to the investigation agency, was stolen from the petitioner and was misused by the persons other than the petitioner, would be unjust and unfair. Petitioner would be directed to execute a bond for Rs.50,000/- with two solvent sureties of the like sum each to the satisfaction of the court below concerned as a condition in substitution of the earlier condition to furnish immovable property as security. All the other applicable and relevant conditions which are prevailing at the time of issuance of present impugned Annexure-A7 order would continue to remain in force. So the petitioner can continue to have only interim custody of the vehicle and the decision regarding the final custody of the vehicle would be decided only by way of appropriate proceedings at the appropriate stage. In this view of the matter the impugned Annexure- A7 order to the extent it rejects the prayer of the petitioner is set aside and it is ordered that in substitution of the earlier impugned condition that the petitioner should furnish the immovable property as security for getting interim release of the vehicle shall stand vacated and substituted with the direction that

the petitioner shall execute a bond for Rs.50,000/- with two solvent sureties for the like sum each to the satisfaction of the court below concerned. On executing such bond and furnishing such solvent sureties, the title deeds deposited by the petitioner shall be released to him. However, it is made clear that the other applicable conditions which were in force immediately prior to issuance of the impugned Annexure-A7 order which governs the interim release of the vehicle will remain unaltered. This order shall not in any manner trammel or influence the other criminal proceedings pending in this matter including the issue as to the final custody of the vehicle. Such matters will have to be decided untrammelled and un influenced in any manner by the observations made in this order.

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

Sd/- ALEXANDER THOMAS, JUDGE