

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

Crl.MC.No. 3067 of 2015 ()

**C.M.P.No.1176 OF 2015 IN C.M.P.No.1177 OF 2015 OF THE JUDICIAL FIRST CLASS
MAGISTRATE-I, KANNUR.**

PETITIONER/COMPLAINANT:

**A.O.RAMACHANDRAN, AGED 65 YEARS,
S/O. KRISHNAN NAMBIAR, 'NIRMALYAM', ELAYAVOOR
VARAM, KANNUR- 670 594.**

**BY ADVS.SRI.M.RAMESH CHANDER (SR.)
SRI.ANEESH JOSEPH
SMT.DENNIS VARGHESE**

RESPONDENT/ACCUSED AND STATE:

**1. M.SHEEBA,
D/O. KUNHIRAMAN, MAVILACHALIL HOUSE,
VARAM, KANNUR - 670 594.**

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

**R1 BY ADVS. SRI.SHAIJAN C.GEORGE
SRI.C.K.SAJEEV
SMT.S.REKHA KUMARI
SRI.M.T.AJITH
SMT.SAJITHA GEORGE**

R2 BY PUBLIC PROSECUTOR: SMT. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-09-
2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 3067 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1 : COPY OF THE REGISTRATION PARTICULARS ISSUED BY THE
REGIONAL TRANSPORT OFFICER.**

**ANNEXURE A2 : COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE
JUDICIAL FIRST CLASS MAGISTRATE COURT - I .**

ANNEXURE A3 : COPY OF THE COMPLAINT

**ANNEXURE A4 : COPY OF THE ORDER IN CMP NO.1176 OF 2015 OF THE JUDICIAL
FIRST CLASS MAGISTRATE - I, KANNUR DATED 26.03.2015.**

RESPONDENT(S)' ANNEXURES:NIL

//TRUE COPY//

PA TO JUDGE

skr

SUNIL THOMAS, J.

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Cr.M.C.No. 3067 of 2015

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Dated this the 9th day of September, 2015

ORDER

The petitioner herein is the complainant before the court below and also the R.C. owner of the vehicle bearing No.KL-13/T 541, a Maruthi 800 car. Claiming that vehicle was thereafter entrusted to the accused herein, whose authority was later withdrawn and alleging that the accused was illegally retaining the vehicle and thereby has committed the offence punishable under Section 406 IPC, he moved the learned Magistrate. Along with the complaint, C.M.P.No.1176 of 2015 was filed seeking exercise of powers under Section 94 Cr.P.C. The court below allowed in part, though the specific prayer for search and seizure was declined by the court below. This has resulted in this CrI.M.C.

2. Heard both sides and examined the records.

3. The learned counsel for the petitioner contended that the court below committed illegality by holding that the court has no power under Section 94 Cr.P.C to conduct such search and seizure. The learned counsel contended that though Section 94 relates to a stolen property or any other objectionable property, the learned counsel invited my attention to Section 410 IPC. It provides that stolen property includes a property which has been criminally misappropriated or in respect of which Criminal breach of trust has been committed. The learned counsel contended that thus, the court misread the provision and applied the law wrongly.

4. To that extent on legal principle I may agree with the learned counsel. However it is pertinent to note that the specific contention of the accused was that the property was sold to her for valid consideration. In this regard the

learned counsel for accused relied on the reply notice sent by him, which has not been let in evidence, at this stage, since the evidence is yet to commence. It indicates that regarding the ownership of the vehicle, there is a serious dispute between the complainant and the accused. The question whether the offence is made out or not essentially depends on determination of ownership, though the complainant claimed to be the RC owner of the vehicle. Having regard to this aspect, the court below was justified in not granting the relief under Section 94 Cr.P.C.

5. Further, the court below has been careful in moulding the relief and protecting the interest of the petitioner herein also. The court below having considered the legal aspects has proceeded to discuss the exercise of jurisdiction as seen from Para 7 onwards. The court below has considered the aspect that the respondent was in

possession of the vehicle for the past one year. There has not been any previous complaint regarding that. Having considered these aspects, the court below called upon the respondent herein, the accused, to execute the bond for a sum of Rs. 2,00,000/- with two solvent sureties. This to my mind, is in full agreement with the interest of the petitioner herein.

6. The learned counsel for the petitioner contended that since he is the R.C. owner of the vehicle and in the eventuality of vehicle being involved in any criminal offence, ultimately the liability may be cast on him. I am not impressed by this argument, since the accused has on record taken a definite contention that she was the owner in possession of the vehicle though registration has not been transferred. If that be the position, in the eventuality of vehicle being involved in any criminal offence, the

accused cannot escape from the consequences arising there from.

7. Having regard to these facts, I find no material to interfere with the impugned order. Petition is dismissed.

Sd/-
SUNIL THOMAS,
JUDGE.

skr