

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

CrI.MC.No. 3552 of 2015 ()

**CRL.MP. NO.10/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
KOTTARAKKARA.
CRIME NO. 1464/2013 OF KADAKKAL POLICE STATION, KOLLAM DISTRICT.**

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PETITIONER/ACCUSED:

**BINOY, BINOY BHAVAN,
KODANNOOR, CHANNAPETTA VILLAGE,
KOLLAM DISTRICT.**

**BY ADVS.SRI.R.SURAJ KUMAR,
SRI.SUNIL J.CHAKKALACKAL,
SMT.V.BEENA,
SRI.SAJITH C.GEORGE,
SMT.V.DEEPA.**

RESPONDENT/COMPLAINANT/STATE:

**THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.GITHESH. R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A - TRUE COPY OF THE ORDER DATED 24.09.2013 IN
BA NOS.6261 AND 6262 OF 2013.**
- ANNEXURE B - CERTIFIED COPY OF THE ORDER DATED 15.01.2014 IN
CRL.M.P NO.10/2014 ON THE FILE OF THE JUDICIAL
MAGISTRATE OF FIRST CLASS - II, KOTTARAKKARA.**
- ANNEXURE C- COPY OF THE RECEIPT DATED 24/10/2013.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3552 of 2015

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Dated this the 3rd day of July, 2015

O R D E R

The prayer in this Crl.M.C.No. is to set aside Anx.B order passed by the Judicial First Class Magistrate's Court,-II, Kottarakkara, dated 15.1.2014, whereby the prayer of the petitioner in Criminal Miscellaneous Petition No.10/2014 made before the court below for grant of interim custody of the car seized in connection with that crime, has been refused by the court below on the ground that the petitioner, who is A-1, purchased the car out of the money swindled from the public and that therefore interim custody of the vehicle was not granted to the petitioner, etc. Many contentions are urged by the petitioner in support of his prayer in this Crl.M.C. to set aside the impugned order and to enable this Court to issue necessary directions for interim custody of the vehicle to the petitioner.

2. Heard Sri.R.Suraj Kumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the

respondent State of Kerala.

3. The petitioner is accused No.1 in the impugned crime for offence under Sec.420 of the I.P.C.. This Court, by Anx.A order dated 24.9.2013 had granted bail to the petitioner in that crime, wherein one of conditions was that the petitioner shall deposit before the Judicial First Class Magistrate's Court, the amount in a bank deposit for two years, which is equal to the amount payable to the defacto complainant in the above said cheating case.

4. In compliance with that condition, the petitioner has deposited totally an amount of Rs.40,000/- before the court below, which appears to be the amount equivalent to the amount said to have been cheated by the petitioner from the defacto complainant in that crime. This Court had earlier directed the petitioner and the Prosecutor to file appropriate statement to give clarification in that regard. The petitioner has filed an affidavit dated 29.6.2015, wherein it is stated that the amount that was deposited in compliance with the this Court's bail order was Rs.40,000/- and that he has already deposited the same as per Anx.C series of receipts, whereby a total amount of Rs.40,000/- has been deposited by the petitioner. The Public Prosecutor has also filed a statement

dated 1.7.2015 of the investigating officer in this crime. It is stated therein that the petitioner has deposited the aforestated amount of Rs. 40,000/- before the court below. It appears that as far as this particular crime is concerned, the amount of loss said to have suffered by the victim of the cheating case in the particular case is Rs.40,000/-. The vehicle in question has been seized solely in connection with the investigation in the present crime. In this view of the matter, as the whole amount of the loss said to have suffered by the victim in the cheating case in the particular crime has already been deposited by the petitioner in compliance with this Court's bail order, then the question of further retaining the vehicle for meeting the objective of re-couping the loss of the victim of this cheating case does not actually arise. Moreover, the retaining the vehicle in the court custody or in the Police custody will only put to great disuse of the vehicle and its resultant damage in the long run. In the light of the legal principles laid down by the Apex Court in the case *Sunderbhai Ambalal Desai v. State of Gujarat* reported in 2003 (2) KLT 1089 (SC)=AIR 2003 SC 638 the question of interim release of the vehicle could be considered by this Court. Accordingly, it is ordered in the interest of justice that the impugned Anx.B order is set aside

and it is further ordered that the interim custody of the vehicle in question shall be granted to the petitioner on his filing an affidavit before the court below undertaking that he shall not transfer or alienate or encumber the vehicle in any manner without the prior permission of the court below concerned and that he shall not dismantle the vehicle in any manner and the vehicle shall not be used in the commission of any other crime. It is made clear that on the petitioner filing such affidavit before the court below, it will be open to the court below to impose any other conditions that may be really just and necessary in the facts of this case. Subject to the petitioner complying with such conditions, the interim custody of the vehicle shall be released to him.

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

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ALEXANDER THOMAS, JUDGE
///True copy///

P.S. to Judge