

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

Crl.MC.No. 3609 of 2015 ()

CMP. NO.691/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY.

.....

PETITIONER/CLAIM PETITIONER:

**SHAMEER M.A., AGED 34 YEARS,
S/O.ABDUL KAREEM, MOOLAMPILLY HOUSE,
SREEMOOLANAGARAMKARA, CHOWARA VILLAGE,
ALUVA TALUK.**

**BY ADVS.SRI.K.S.RAJEEV (ALUVA),
SMT.DHANYA MOHAN,
SRI.A.H.AJITH KHAN.**

RESPONDENTS/COMPLAINANT:

- 1. STATE OF KERALA,
THROUGH SUB-INSPECTOR OF POLICE,
NEDUMBASSERY POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. MANAGING DIRECTOR,
THIRUVALLOOR TRANSPORT CORPORATION LTD.,
PALLAVARAM, CHENNAI, TAMILNADU - 600 002.**

R1 BY PUBLIC PROSECUTOR SRI.N. SURESH.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

ANNX.A - TRUE COPY OF CRIMINAL MP NO.691/2015 DATED 21.05.2015.

**ANNX.B - TRUE COPY OF ORDER IN CRIMINAL MP NO.691/2015
DATED 29.05.2015.**

ANNX.C - COPY OF RC BOOK.

ANNX.D - COPY OF INSURANCE CERTIFICATE.

ANNX.E - COPY OF TAX RECEIPT DATED 05.05.2015.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

Crl.M.C.No.3609 Of 2015

Dated this the 1st day of July, 2015.

ORDER

The order under challenge in this petition is one impugned at Anx-B rendered on 29.5.2015 by the Judicial First Class Magistrate Court, Angamaly in C.M.P.No.619/2015 in Crime No.216/15 of Nedumbassery Police Station whereby the prayer made by the petitioner for interim custody of his Royal Enfield Bullet seized in connection with the crime has been refused. The impugned Anx-B order reads as follows:

“This application is filed by the petitioner u/s 451 Cr.P.C for interim custody of the vehicle bearing reg.no.TML 9902, 1985 model Royal Enfield Bullet involved in crime no.216/2015 of Nedumbassery Police Station. The offence alleged is u/s.279, 304 (A) IPC.

Heard and perused report of Investigating Officer. The vehicle is registered in another state. No documents to show the right of the petitioner over the vehicle is produced , for granting interim custody of the vehicle to him.

Hence Petition dismissed.”

Crl.M.C.No.3609 Of 2015

2. It is pointed out by Sri.K.S.Rajeev, learned counsel for the petitioner that the main ground for rejection as per Anx-B order is that there are no documents to show the right of the petitioner over the vehicle for granting interim custody of the vehicle to him. It is pointed out that indisputably the police authorities concerned had seized the above vehicle in connection with the crime and the police duly produced the documents before the court below concerned and Anx-C series are the copies of the related documents pertaining to the vehicle in question which are now in possession of the court below and it is submitted that there are no other documents to prove the possession of the vehicle for interim release. It is further alleged by the learned counsel for the petitioner that the petitioner herein had actually purchased the vehicle from the 2nd respondent through second hand sale. The 2nd respondent-Thiruvalloor Transport Corporation Ltd., Tamil Nadu, despite various efforts, had not traced out the papers in relation to that vehicle for effecting the ownership transfer in favour of the petitioner etc., and that as of now, the RC ownership in these documents in respect of the vehicle is shown in the name of the 2nd

Crl.M.C.No.3609 Of 2015

respondent -Thiruvallloor Transport Corporation. It is further pointed out by the petitioner that he would file an affidavit stating all these aspects before the court below and that after getting interim custody of the vehicle he would take steps with the 2nd respondent to effect the change of RC ownership and upon that he would produce documents in that regard before the court below and before the Investigating Officer concerned.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent-State of Kerala.

4. As of now, the only main ground stated in Anx-B rejection order by the court below is that the petitioner has not produced any relevant documents in respect of the vehicle in question so as to consider the grant of interim custody of the vehicle. The petitioner has offered Anx-C series copies of the original pertaining to the documents referred to in Anx-C has already been in the custody of the court below. It is further pointed out that it is discernible that the police has seized the vehicle from the petitioner. It is also pointed out that Sec.110 of Indian Evidence

Crl.M.C.No.3609 Of 2015

Act dealing with the burden of proof as to ownership which reads as follows:

“110. Burden of proof as to ownership:- When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.”

It is for the petitioner to urge all such relevant aspects before the court below. In view of these aspects, it is ordered in the interest of justice that Anx-B rejection order is set aside. C.M.P.No.691/2015 in Crime No.216/2015 of Nedumbassery Police Station shall stand remitted back to the Judicial First Class Magistrate Court, Angamaly and the learned Magistrate shall consider the entire matter afresh and take appropriate decision thereon on the plea of the petitioner that the interim custody of the vehicle after affording reasonable opportunity of being heard to the petitioner through his counsel and to the Investigating Officer through the Public Prosecutor concerned. Orders in this regard should be passed within one month from the date of receipt of a certified copy of this order. It is open to the petitioner to urge all the contention now urged before this Court or any other aspects which may be relevant for the matter before the court below. The court below will take a considered decision particularly in the light of the fine tuned legal

Crl.M.C.No.3609 Of 2015

principles laid down by the Apex Court in the case Sunderbhai Ambalal Desai v. State of Gujarat reported in 2003 (2) KLT 1089 (SC) so that if actually the vehicle has been seized from the petitioner's possession and there is no dispute by way of any rival claim of ownership over the vehicle, then a pragmatic and equitable consideration of the matter may be made.

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

ALEXANDER THOMAS,
Judge.

bkn/-