

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. 3751 of 2015 ()

**-----
CMP. NO.4150/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
NEDUMANGAD.**

CRIME NO. 50/2014 OF VAMANAPURAM EXCISE RANGE.

.....

PETITIONER/PETITIONER:

**SANTHOSH, S/O.SUKUMARAN,
SANTHOSH BHAVAN, THOOTTIKKAL,
CHITHARA DESOM, MANKODE VILLAGE,
KOTTARAKKARA TALUK, KOLLAM DISTRICT.**

**BY ADVS.SRI.S.RAJEEV,
SRI.K.K.DHEERENDRAKRISHNAN,
SRI.V.VINAY.**

RESPONDENT/STATE/COUNTER PETITIONER:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031,
(CRIME NO.50/2014 OF VAMANAPURAM EXCISE RANGE).**

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:-

- ANNEXURE I- TRUE COPY OF THE REGISTRATION CERTIFICATE OF
VEHICLE NO.KL-24-F-7084.**
- ANNEXURE II- TRUE COPY OF CONTRACT CARRIAGE PERMIT ISSUED BY
THE SUB REGIONAL TRANSPORT OFFICER VALID FROM
25.02.2013 TO 24.02.2018.**
- ANNEXURE III- CERTIFIED COPY OF THE ORDER DATED 28.03.2015 IN
CMP NO.4150/15 PASSED BY JUDICIAL MAGISTRATE OF
FIRST CLASS-II, NEDUMANGAD.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

ALEXANDER THOMAS, J.

=====

Crl.M.C No.3751 of 2015

=====

Dated this the 1st day of July, 2015

ORDER

The order under challenge is the impugned Anx.3 order rendered on 28.3.2015 on CMP No.4150/2015 in Crime No.50/2014 of Vamanapuram Excise Range, Thiruvananthapuram District, refusing to grant interim custody of the autorikshaw vehicle seized from the petitioner in connection with the above impugned crime. The court below has refused to grant prayer of the petitioner for interim custody of the seized vehicle in question on the ground that confiscation proceedings u/s 65 of the Abkari Act has been initiated and therefore the Judicial Magistrate has no jurisdiction in the matter and that it is for the petitioner/accused to approach the said Sub Divisional Magistrate/District Collector concerned due to the pendency of such confiscation proceedings.

2. Heard Sri. S. Rajeev, learned counsel for the petitioner and the learned Public Prosecutor for the respondent State of Kerala.

3. The matter in issues is fully covered in favour of the

petitioner in view of the legal principles laid down by this Court in the case Kumkuma Priya Vs. State of Kerala [2015 (2) KLT 438] wherein this Court has held that the Judicial Magistrate cannot abdicate the statutory judicial function conferred u/s 451 Cr.P.C merely on the ground that confiscation proceedings may be otherwise pending before the Statutory Excise Authority concerned without prejudice to the continuance of such confiscation proceedings, the learned Judicial Magistrate concerned is duty bound to exercise his statutory discretion u/s 451 Cr.P.C and consider the plea on merits and take a decision thereon subject to any reasonable condition that may be imposed to protect the interest of the prosecution etc. In this view of the matter the impugned Anx.III order is set aside and the C.M.P No.4150/15 is remitted back to the consideration of the Judicial Magistrate concerned. The learned Judicial Magistrate shall consider the entire matter afresh and take a decision thereon after granting an opportunity to the petitioner to be heard through his counsel, if any, and the Investigating Officer through the learned Public Prosecutor concerned and take a decision thereon in accordance with the legal principles laid down by this Court in the ruling reported in 2015 (2)

KLT 438 as well as the decision of Apex Court in Sundarbai Ambalal Desai Vs. State of Gujarat 2003 (2) KLT 1089 (SC). It is made clear that such decision to be taken by the learned Judicial Magistrate will be without prejudice to any confiscation proceedings that may be pending in this matter. It is made clear that the decision as aforestated shall be taken by the Judicial Magistrate concerned within a period of 10 days from the date of production of the certified copy of this order.

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

sab

ALEXANDER THOMAS, JUDGE

