

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 8TH DAY OF JULY 2015/17TH ASHADHA, 1937

Crl.MC.No. 3784 of 2015

**CRL.MP 1359/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, HARIPAD
CRIME NO. 582/2015 OF KAREELAKULANGARA POLICE STATION, ALAPPUZHA**

PETITIONER(S)/PETITIONER:

**PRAJEESH K.A, AGED 31 YEARS,
S/O.ANTONY, KARICKAL, THIMIRI.P.O.
KANNUR DISTRICT.**

BY ADV. SMT.M.A.SULFIA

RESPONDENT(S)/RESPONDENT:

**1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI-682 031.**

**2. SUB INSPECTOR OF POLICE,
KAREELAKULANGARA POLICE STATION.**

BY PUBLIC PROSECUTOR SRI.GITHESH. P.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 3784 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE A1- TRUE COPY OF THE CRL.M.P. 1359/2015 FILED BEFORE THE JFCM-I
HARIPAD.**

**ANNEXURE A2- CERTIFIED COPY OF THE ORDER IN CRL.M.P. 1359/2015 OF LEARNED
JFCM-I HARIPAD.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C No.3784 of 2015

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Dated this the 8th day of July, 2015

O R D E R

The prayer in this petition is to set aside the impugned Anx.A-2 order dated 22.5.2015 by the Judicial First Class Magistrate Court-I, Haripad on C.M.P No.1359/15 in crime No.582/15 of Kareelakulangara police station whereby the prayer of the petitioner for interim custody of mobile phone and currency notes of Rs.22,000/- was rejected. The petitioner is the de facto complainant in Crime No. 582/15 of Kareelakulangara Police Station registered for offences u/s 394 r/w 34 of the IPC. The prosecution case is that on 6.5.2015 at about 8.30 p.m, while the petitioner (CW1) was driving vehicle (Lorry) through the National Highway Road and when he reached Kanjoor Temple, the accused persons came in two bikes and obstructed the petitioner and A1 to A3 got in the cabin of the lorry and inflicted injury on CW1 and accused took away Rs.22,000/- and a mobile phone from the petitioner etc. The said prayer was rejected by the court below as per Anx-A2 on the

ground that these articles are necessary at the time of evidence. This order is under challenge in this Crl.M.C

2. Heard Sri. A. Abdul Jaleel, learned counsel appearing for the petitioners and the learned Public Prosecutor appearing for the respondent.

3. The Apex Court in the case Sundarbai Ambalal Desai Vs. State of Gujarat 2003 (2) KLT 1089 (SC) has laid down elaborate guidelines for the grant of interim custody of the articles seized in connection with criminal miscellaneous litigation. Taking into account the the legal principles laid down by the Apex Court in the decision as in Sundarbai Ambalal Desai Vs. State of Gujarat (supra), it is ordered in the interest of justice as follows:

The impugned Annexure-A2 rejection order is set aside. The necessary photographs or video graphs of the mobile phone may be taken by the Investigating Officer in the presence of the independent witness and a Mahazar in that regard may also be prepared. Any other relevant identification numbers of the mobile phone may also be noted in the Mahazar, if that is possible under the circumstances. As far as possible, the number and details of each of the currency notes should also be easily discernible from

the photographs and video graphs taken and the details of all the notes with the numbers, denominations should also be noted down in such Mahazar in the presene of the independent witnesses. The petitioner will also file an affidavit, undertaking that he would not alienate or sell or transfer the cellular mobile phone in any manner till the conclusion of the trial, except with the permission of the competent court. There is no point in retaining the currency notes and the Mahazar so prepared in the presence of independent witness would be sufficient for the purpose of the trial, for which, the prosecution has also no objection. On completion of these formalities, and on the petitioner filing the affidavit as aforestated, the interim custody of the mobile phone and the currency notes shall be released to the petitioner without any further delay.

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

sd/-

sab

ALEXANDER THOMAS, JUDGE