

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 3804 of 2015 ()

**CMP.NO. 1217/2015 OF CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM
CRIME NO. 192/2015 OF KADAVANTHRA POLICE STATION, ERNAKULAM DISTRICT**

PETITIONER/PETITIONER :

**MAGMA FINCORP LTD.,
REPRESENTED BY ITS STATE HEAD (LEGAL) RAKESH DAWNY
1ST FLOOR, JAIN TOWER, POWER HOUSE ROAD
N.H. BYEPASS, VYTILLA, ERNAKULAM.**

**BY ADVS.SRI.PHILIP T. VARGHESE
SRI.THOMAS T. VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA**

RESPONDENTS/RESPONDENTS :

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING THE SUB INSPECTOR OF POLICE
KADAVANTHRA POLICE STATION, ERNAKULAM-682 020.**

**2. IBRAHIM PULLAKKAL MOHAMMED
11/604, PULLAKKAL HOUSE, P.O. KONDUKARA
VIA PATTAMBI, PALAKKAD DISTRICT-679 303.**

**R1 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN
R2 BY ADV. SRI.M.H.HANIS**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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...2/-

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APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE A1 : TRUE COPY OF CMP NO.1217/2015 FILED BY THE PETITIONER
IN THE CHIEF JUDICIAL MAGISTRATE'S COURT, ERNAKULAM
DATED 27-2-2015.**

**ANNEXURE A2 : TRUE COPY OF CMP.NO.1356/2015 FILED BY THE 2ND
RESPONDENT IN THE CHIEF JUDICIAL MAGISTRATE'S COURT,
ERNAKULAM DATED 5-3-2015.**

**ANNEXURE A3 ; TRUE COPY OF THE COMMON ORDER PASSED BY THE CHIEF
JUDICIAL MAGISTRATE, ERNAKULAM IN CMP NO.1217/2015
AND CMP NO.1356/2015 IN CRIME NO.192/2015 OF
KADAVANTHRA POLICE STATION DATED 22-4-2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

ALEXANDER THOMAS, J.

Crl.M.C.No.3804 Of 2015

Dated this the 20th day of August, 2015.

ORDER

The order under challenge is one at Anx-A3 dated 22.4.2015 rendered on C.M.P.Nos.1217/2015 & 1356/2015 on the file of the Chief Judicial Magistrate Court, Ernakulam in Crime No.192/2015 of Kadavanthra Police Station, whereby the prayer of the petitioner (financier) for interim release of the seized vehicle in question has been declined whereas the prayer made by the contesting 2nd respondent (hirer of the vehicle) for interim custody of the vehicle has been allowed.

2. Heard.

3. The petitioner is said to be financier of the vehicle in question and the 2nd respondent is said to be the hirer of the vehicle in question. It is the case of the petitioner that the 2nd respondent has not registered the vehicle even after the lapse of two years of the purchase of the vehicle and that he transferred the vehicle to a third party. It is also pointed out by the petitioner that though there was a temporary registration formally in the name of the 2nd respondent, the provisions

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of the Motor Vehicles Act and Rules mandate that validity period of temporary registration is only 3 months and thereafter the person concerned is legally obliged to seek permanent registration of the said vehicle and obtain permanent Registration Certificate Number in respect of the vehicle under the provisions of Motor Vehicles Act and Rules which the 2nd respondent indisputably has not done in the instant case. Therefore, it is pointed out that the claim made by the 2nd respondent cannot in any way be said to be treated as the claim made by the registered owner of a vehicle. The other main contention raised by the petitioner are those under grounds 'C' to 'I' of this petition which reads as follows:

“C. The Court below has failed to appreciate that the 2nd respondent had not even registered the vehicle purchased by him in September 2013 so far, that he had not paid the motor vehicle tax due, that there was no valid insurance policy for the vehicle, that he had alienated the vehicle to the accused in violation of the terms of the agreement with the financier so as to make undue gain for himself and that he had defaulted in payment of amounts due to the financier. Each of these factors, which would reveal the dishonest and fraudulent nature of the 2nd respondent and would have been sufficient to refuse the custody of the vehicle to the 2nd respondent, have all been ignored by the Court below while passing Annexure A3 Order.

D. The finding of the Court below in Annexure A3 order that the best person to get possession of the vehicle is the 2nd respondent is not supported by any reasoning. In fact such a conclusion would not have been reached if there had been a proper appreciation of the facts,

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the material on record and the law.

E. The Court below ought to have found that the petitioner has much more financial stake in the vehicle and there is no collateral security for realisation of the amount due to the petitioner from the 2nd respondent. The Court below ought to have found that granting custody of vehicle to the petitioner was essential so as to protect the undisputable financial claim of the petitioner.

F. The Court below ought to have appreciated the fact that the 2nd respondent has committed breach of law and breach of contract with the petitioner and he is not entitled for any favourable consideration.

G. The Court below ought to have found that the petitioner is the best person to get custody of the vehicle and denial of custody to them will cause irreparable hardship and damage to them. It should also have been found that grant of custody of the vehicle to the 2nd respondent would result in further undue advantage to them.

H. It is submitted that the 2nd respondent has no genuine interest to get custody of the vehicle and such a claim had been raised by them solely to harass the petitioner and thereby obtain undue gain for themselves at the expense of the petitioner. This is evident from the non-filing of petition for custody by the 2nd respondent till claim was raised by the petitioner and the failure of the 2nd respondent to get the vehicle released even after Annexure A3 Order.

I. The conditions imposed in Annexure A3 Order for release of the vehicle to the 2nd respondent are insufficient to protect the interest of the petitioner or even the State. If at all custody was being granted to the 2nd respondent, it should have been ensured that the liability to the petitioner was fully settled and all the statutory requirements complied with by the 2nd respondent."

The main reasonings in the impugned Anx-A3 order are given on paragraphs 6 & 7 thereof which reads as follows:

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“6. Heard both sides and perused case records. The impugned vehicle has not been registered. Copy of the temporary registration is produced by the financier as well as the petitioner in both CMPs. It is endorsed that Ibrahim Pullaykkal Mohammed, S/o. Mohammed Pullaykkal, has got temporary registration. The vehicle has been purchased availing loan from the financier. The loanee has defaulted the repayment of loan amount. Therefore, financier has got every right to get the possession of the vehicle through the process of Court. The counsel for the financier relied on 1991(1)KLJ 217 (Divakaran V. Abdul Kalam & Another), 2002(3) KLT Sh.Note 3 (Abdul Rahim v. State of Kerala) and 2000(3) KLT 529 (Amarchand Chajer v. Sub Inspector of Police) and the financier is entitled to get the possession of the vehicle in view of arrears of loan amount availed by the petitioner in CMP 1356/15/purchaser. The purchaser has not yet purchased the vehicle. The loan amount is kept in arrears.

7. It is true that the owner has entrusted the vehicle to the accused in this case and kept the loan amount in arrears. The decisions relied on by the financier is not applicable to the facts and circumstances in this case. Herein, the accused is a stranger who has transferred the vehicle to another persons without the consent and knowledge of the owner of the vehicle. The financier has got every right to get the possession of the vehicle based on the agreement executed between the petitioner and borrower. Whereas, in a petition filed u/s.451 Cr.P.C., the court is liable to consider the best person who entitled to get the possession of the vehicle. Herein, the temporary registration obtained by the petitioner in CMP 1356/15 applied for getting permanent registration of the vehicle. The petitioner in CMP 1356/15 is the temporary registered owner of the vehicle at the time of seizure of the vehicle. Therefore, I find that the best person to get the possession of the vehicle is the petitioner in CMP 1356/15 and financier is not entitled get possession of the vehicle u/s.451 Cr.P.C.”

From a perusal of the impugned order it can be seen that some of the vital contention urged has not been considered in the proper

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perspective. Though the court below has acknowledged the fact that the 2nd respondent is only having temporary registration for the vehicle in question and has also noted the fact that the 2nd respondent has entrusted the vehicle to the accused and kept the loan amount in arrears, etc., the effect of the petitioner's contention that the 2nd respondent was not actually having permanent registration and therefore his claim cannot be treated as the one made by the registered owner has not been appreciated in the proper perspective. The other contentions are not seen properly considered. In the light of these aspects of the matter, this Court is of the considered opinion by exercising the jurisdiction of this Court conferred under Sec.482 of the Cr.P.C that it will be more advisable for the court below is to have a second look at the entire matter. In this view of the matter, the impugned Anx-A3 order dated 22.4.2014 rendered in Crl.M.P.Nos.1217/2015 & 1356/2015 on the file of the Chief Judicial Magistrate Court, Ernakulam, in the impugned Crime No.192/2015 of Kadavanthra Police Station is quashed. The matter is remitted back to the court below for passing orders afresh after hearing both sides and after adverting to rival contentions of both sides. It will be open to the petitioner and 2nd respondent to submit a detailed written submission in

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the matter through their respective counsel, if any. The court below have to advert to and pass a considered order on merits within a period of four weeks from the date of production of a certified copy of this order. It is made clear that it is entirely within the province of the court below to have a second look in accordance with law after adverting to each of the contentions raised by the parties, untrammelled by any of the observations made in this order.

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

ALEXANDER THOMAS,
Judge.

bkn/-