

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Crl.MC.No. 3812 of 2015 ()

**CP 19/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR DATED
CRIME NO. 2202/2013 OF ADOOR POLICE STATION, PATHANAMTITTA**

PETITIONER/PETITIONER/CW2 :

**SHERLY SAMUEL, AGED 27 YEARS,
W/O. JIJO JOHN, MANKOOTTATHIL VEEDU, MAROOR P.O.,
ELAMANNOOR, ENADIMANGALAM VILLAGE, ADOOR.**

**BY ADVS.SRI.K.SHAJ
SRI.SAJJU.S**

RESPONDENTS/STATE :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SUB INSPECTOR OF POLICE
ADOOR POLICE STATION, ADOOR, PATHANAMTHITTA.**

BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE-A1:** THE TRUE COPY OF THE FINAL REPORT IN C.P.NO.19/2015 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR.
- ANNEXURE-A2:** COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING REGISTRATION NO.KL-03-Q-484.
- ANNEXURE-A3:** TRUE COPY OF THE PHOTOGRAPHS OF THE DAMAGED CAR OF THE PETITIONER.
- ANNEXURE-A4:** THE TRUE COPY OF THE PETITION FILED AS CMP NO.6470/2014 IN C.P.NO.19/2015 UNDER SECTION 451 OF THE CODE OF CRIMINAL PROCEDURE, BEFORE THE LEARNED JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR.
- ANNEXURE-A5:** TRUE COPY OF THE ORDER DATED 29/05/2015 IN CMP NO.6470/2014 IN C.P.NO.19/2015 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, ADOOR.
- ANNEXURE-A6:** COPY OF THE INSURANCE POLICY ISSUED FROM THE UNITED INDIA INSURANCE COMPANY LIMITED, BRANCH OFFICE, PUNALUR, KOLLAM

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3812 of 2015

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Dated this the 20th day of July, 2015

ORDER

The order under challenge is the one at Anx.A5 dated 29.5.2015 rendered by the Judicial First Class Magistrate's Court, Adoor in Crl.M.P.No.6470/2014 in C.P.No.19/2015, whereby the request of the petitioner under Sec.451 of the Code of Criminal Procedure was rejected. The petitioner herein is the petitioner in Anx.A-4 Crl.M.P.No.6470/2014 in C.P.No.19/2015 filed before the Judicial First Class Magistrate's Court, Adoor. The petitioner is CW-2 in the final report/charge sheet submitted by the 2nd respondent Sub Inspector of Police, Adoor Police Station, in Crime No. 2202/2013 of Adoor Police Station, which is now pending as C.P.No.19/2015 on the file of the Judicial First Class Magistrate's Court, Adoor. The crime is registered against two persons for offences under Secs.447, 436 read with Sec.34 of the I.P.C. Since one of the offences is under Sec.436 of the I.P.C., which is exclusively triable by the the Court of Session, the matter is now pending in the

aforestated committal proceedings in C.P.No.19/2015. The gist of the prosecution case is that on 4.12.2013 the accused persons criminally trespassed into the car porch of the house of the petitioner's house and set fire her Mahindra Scorpio car bearing registration No.KL-03-Q-484 using petrol and consequently the car was completely damaged. Accordingly, Crime No.2202/2103 of Adoor Police Station was registered on the basis of the statement given by the husband of the petitioner for offences under Secs.447, 346 read with Sec.34 of the I.P.C. After the incident, the investigating officer prepared the mahazar, photographs and inventory of the vehicle and it has been reported to the jurisdictional Magistrate that since the vehicle is totally damaged, it is unable to remove the same from the place of occurrence and as such, damaged vehicle is kept in the car porch of the petitioner. It is pointed out that in the above incident, the some damages were also caused to the house of the petitioner.

2. It is pointed out that since the date of occurrence is on 4.12.2013 onwards, the damaged vehicle is being kept in the car porch of the petitioner and that since the vehicle is kept in the car porch of the petitioner, she is not in a position to renovate her

house, which is damaged in the incident or to do maintenance work of the house and moreover, for getting the insurance of the vehicle, there must be an order of disposal of the property from the trial court. It is thus pointed out that the damaged vehicle has been kept continuously in the car porch of the petitioner for more than one-and-a-half years. Accordingly, the petitioner had filed Anx. A-4 Crl.M.P.No.6470/2014 in C.P.No.19/2015 before the Judicial First Class Magistrate's Court, Adoor praying for custody and disposal of the vehicle. The request at Anx.A-4 has been rejected by Anx.A-5 order, due to the following reasons stated in paragraph 5 thereof, which read as follows:

“5. I have perused the records of the case. The specific case of the prosecution is that accused 1 and 2 on 4.12.13 criminally trespassed into the compound of the defacto complainant and set fire to the Scorpio car of the defacto complainant which was kept in the car porch. The police registered crime no.2202/13 of Adoor Police station against the accused person 1 and 2 alleging commission of offences punishable u/s.447, 436 r/w 34 I.P.C. After completing investigation the police filed final report against accused 1 and 2 u/s 447, 436 r/w.34 I.P.C. Since the final report disclosed offence u/s 436 I.P.C. which is exclusively triable by sessions court proceedings were initiated in C.P.19/15 against the accused persons. Since the car which was set to fire is a crucial material object in the case, which is triable by Sessions Court, it is not proper to entertain the petition at this stage. Therefore I am not inclined to allow the petition.”

3. Heard Sri.K.Shaj, learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the

respondent State of Kerala.

4. From an appreciation of the facts and circumstances of the case, it can be seen that the Mahindra Scorpio car belonging to the petitioner was almost completely damaged in the above incident and it is common ground that it is not even possible to move the vehicle to any other place and therefore it has been kept continuously for more than one-and-a-half-years in the car porch of the petitioner and so the petitioner is disabled from repairing/renovating her damaged house as permission should be obtained for disposal of the said completely damaged vehicle. It is pointed out that the investigating officer has already prepared the mahazar, photographs and inventory of the vehicle and it has also been reported to the jurisdictional Magistrate that since the vehicle is totally damaged, it is unable to remove the same from the place of occurrence and therefore the damaged vehicle has been kept almost one-and-a-half years in the car porch of the petitioner. Anx.A-1 given on pages 33 and 34 of the paper book is the report of the Inspector of Motor Vehicles in regard to the instant Crime No.2202 2013 of Adoor Police Station. The details regarding the damages sustained by the above said vehicle have been dealt with in column

No.7 of Anx.A-1 (page 33 of the paper book), which read as follows:

“7. Details regarding the damages sustained by the vehicle due to accident:

- (1) Body shell assembly fully burnt and deformed.
- (2) All tyres are burnt.
- (3) All windshield glasses are broken and damaged.
- (4) All interior fitment seats and instrument panel are burnt.
- (5) Engine assembly burned and damaged.
- (6) All lights and wiring circuits are burnt and damaged.
- (7) Chassis and suspension are burnt and damaged.
- (8) Aircondition system burnt and damaged.
- (9) Steering and brake system are burnt and damaged.”

The other details regarding various other aspects of the damaged vehicle and its parts have been given from column Nos.8 to 20 of Anx.A-1 (see page 34 of the paper book). It is pointed out that at the time of the incident, the vehicle was insured with the United India Assurance Company Ltd., Punalur Branch office, Kollam district and Anx.A-6 is the true copy of the insurance policy issued from that insurance company in respect of that vehicle. It is stated in the affidavit dated 9.7.2015 filed by the petitioner herein along with Crl.M.A.No.6730/2015 in this Crl.M.C. that after the incident, the

petitioner had approached the insurance company and had submitted claim petition for her vehicle bearing registration No.K 03 Q 484 and the insurance company deputed a surveyor to assess the loss and damage to the vehicle and in his opinion, the repair cost of the vehicle exceeds the insured declared vehicle mentioned in the motor vehicle insurance policy and that he has suggested "salvage loss basis" as one of the options for settlement of the claim along with other alternatives. Therefore, it is submitted that unless this Court issues necessary permissive orders, as sought for herein, the petitioner will not be able to dispose of the vehicle on "salvage loss basis" as suggested by the insurance company. It is further stated in paragraph 7 of that affidavit that after the incident the investigating officer had prepared the mahazar, photographs and inventory of the vehicle and it was reported to the jurisdictional Magistrate that since the vehicle is totally damaged and it is unable to remove the same from the place of occurrence and as such, the vehicle is kept in the car porch of the petitioner since 4.12.2013. Accordingly, it is pointed out that this Court may be pleased to direct the court below to record the evidence in respect of the petitioner's vehicle (Scorpio Car bearing registration No.KL-03-Q-484) in evidence on the basis

of the mahazar, photographs and inventory of the vehicle, etc. and grant custody of the vehicle to the petitioner and allow her to sell the vehicle, in the interest of justice.

6. On a perusal of the impugned order, it can be seen that the court below has passed the impugned order, which is not in consonance with the legal principles laid down by the Apex Court decision as in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in 2003 (2) KLT 1089 (SC)=AIR 2003 SC 638. In paragraph 7 of that decision the Apex Court has held that the powers under Sec.451 of the Cr.P.C. should be exercised expeditiously and judiciously and that it would serve various purpose, viz., (1) the owner of the article would not suffer because of its remaining unused or by its misappropriation, (2) the court or the Police would not be required to keep the article in safe custody, (3) If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and (4) this jurisdiction of the Court to record evidence should be exercised promptly so that there may be further chance of tampering with the

articles. It has been held therein that the steps like preparing detailed proper panchnama of such articles and taking photographs of such articles, etc. could be done and that if proper panchnama before handing over the possession of the articles is prepared, that can be used in evidence instead of its production before court during the trial and if necessary, evidence could also be recorded describing the nature of the property in detail, etc. In paragraph 18 of the said decision, the Apex Court has held that in a case where the vehicle is not claimed by the accused, owner, or the Insurance Company or by third person, then such vehicle may be ordered to be auctioned by the Court and if the said vehicle is insured with the Insurance Company, then Insurance Company be informed by the Court to take possession of the vehicle, which is not claimed by the owner or a third person and if the Insurance Company fails to take possession, the vehicle may be sold as per the direction of the Court and that the Court would pass such order within a period of six months from the date of production of the said vehicle before the Court and that before handing over possession of such vehicle, appropriate photographs of the said vehicle should be taken and detailed panchanama should be prepared, etc. In a subsequent

judgment of the Apex Court in the case General Insurance Council and Ors. v. State of Andhra Pradesh and Ors. reported in (2010) 6 SCC 768 = 2010 CrI.L.J.2883 = 2010 (4) SCALE 141 (SC), it was held that in respect of the custody and disposal of seized vehicles, the insurer may move separate application for release of recovered vehicle as soon as it is informed of such recovery before the jurisdictional court and ordinarily release shall be made within a period of 30 days from the date of application and necessary photographs may be taken duly authenticated and certified and a detailed panchnama may be prepared before such release and that photographs so taken may be used as secondary evidence during the trial and thus physical production of the vehicle may be dispensed with. Further, in the judgment in General Insurance Council's case supra, the Apex Court has held in paragraphs 14 to 16 thereof as follows:

'14. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai* [(2002) 10 SCC 283] considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the

application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned.

16. In case any non-compliance is reported either by the petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. With the aforesaid directions, this writ petition stands finally disposed of.'

In the instant case, indisputably the petitioner is the exclusive

owner of the vehicle and the vehicle has been almost completely damaged and it is not even possible to move the vehicle from the car porch. It is also stated that the insurance company, who has insured the vehicle as per Anx.A-6 insurance policy, had deputed a surveyor to assess the loss and damage of the vehicle and in his opinion, the repair cost of the vehicle exceeds the insured declared value mentioned in the motor vehicle insurance policy and has suggested "salvage loss basis" as one of the options for settlement of the claim along with other alternatives. It is also pointed out that mahazar, photographs and inventory of the vehicle have already been prepared duly by the investigating officer, who has already reported to the jurisdictional Magistrate that the vehicle is in a totally damaged condition and is unable to remove even from the place of occurrence, etc. The Inspector of the Motor Vehicles has also issued Anx.A-1 report given on pages 33 and 34 of this paper book, on which detailed reference has already been made in this order. Therefore, there is no other claimant to the vehicle and the victim of the crime is the owner of the vehicle and the vehicle is almost in a totally damaged condition. In the above circumstances, the impugned Anx.A-5 rejection order passed by the

court below is set aside. In case the investigating officer has not so far prepared proper mahazar, inventory and photographs of the vehicle, the investigating officer shall duly prepare the mahazar of the vehicle and shall take necessary photographs and videographs from all necessary angles and the mahazar and the inventory should be prepared as per the due procedure. The mahazar, photographs and videographs of the vehicle and the inventory of the vehicle and Anx.A-1 report of the Motor Vehicles Inspector should be used in evidence instead of insisting on the actual production of the vehicle before the court below during the trial. After fulfilling these conditions, the petitioner shall be permitted to have custody of the vehicle and to dispose of the vehicle as suggested by the insurance company.

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

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge