

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

Crl.MC.No. 3987 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CRMP 733/2014 of C.J.M.PATHANAMTHITTA
DATED 12-03-2015**

PETITIONER(S):

**STATE BANK OF TRAVANCORE
PATHANAMTHITTA MAIN BRANCH
REPRESENTED BY ITS CHIEF MANAGER, AJITH L.JOHN
AGED 59 YEARS, S/O. LUKOSE.**

**BY ADVS.SRI.P.MARTIN JOSE
SRI.M.A.MOHAMMED SIRAJ
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA**

RESPONDENT(S)/COUNTER PETITIONER:

- 1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. PRINCY K.V,
D/O. ANANDAVALLY, KOYPPALLIL HOUSE, ATTARIKKOM MURI
OMALLOOR P.O., OMALLOOR VILLAGE, PIN - 689 647.**
- 3. ANANDAVALLY,
W/O. VIJAYAKUMAR, KOYPPALLIL HOUSE, ATTARIKKONAM MJRI
OMALLOOR P.O., OMALLOOR VILLAGE, PIN - 689 647.**
- 4. PRADEEPKUMAR K.V.,
S/O.ANANDAVALLY, KOYAPPALLIL HOUSE, ATTARIKKOM MURI
OMALLOOR P.O., OMALLOOR VILLAGE, PIN - 689 647.**
- 5. SUNILKUMAR,
NEDIYATHU MODIYIL HOUSE, EAZHAMKULAM
EAZHAMKULAM VILLAGE, PATHANAMTHITTA - 691 554.**

**R1 BY PUBLIC PROSECUTOR SMT SEENA RAMAKRISHNAN
R2-R4 BY ADV. SRI.AJEESH K.SASI**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER's ANNEXURE

- ANNX.A: COPY OF COMPLAINT DATED 27.12.2010 FILED BY PETITIONER BANK BEFORE THE CIRCLE INSPECTOR OF POLICE, PATHANAMTHITTA.**
- ANNX.B: COPY OF THE FIR NO.1379/2010 OF PATHANAMTHITTA POLICE STATION.**
- ANNX.C: COPY OF THE RECOVERY MAHAZAR DATED 29.12.2011 PREPARED BY C.I. OF POLICE, PATHANAMTHITTA POLICE STATION.**
- ANNX.D: COPY OF JUDGMENT DATED 18.01.2012 IN O.S.NO.23/11 OF SUB COURT, PATHANAMTHITTA.**
- ANNX.E: COPY OF CRL.M.P NO.733/2014 FILED BY THE PETITIONER.**
- ANNX.F: COPY OF THE REPORT SUBMITTED BY DY.SUPERINTENDENT OF POLICE, CBCID, PATHANMTHITTA SUB UNIT.**
- ANNX.G: COPY OF OBJECTION FILED BY RESPONDENTS 2 TO 5 TO ANNEXURE E.**
- ANNX.H: COPY OF ORDER IN CMP NO.733/2014 OF CHIEF JUDICIAL MAGISTRATE, PATHANAMTHITTA DATED 12.03.2015.**

RESPONDENTS ANNEXURE: NIL

/TRUE COPY/

P.A TO JUDGE

LSN

K.RAMAKRISHNAN, J.

Crl.M.C. No.3987 of 2015

Dated this the 07th day of December, 2015

ORDER

This is an application filed by the petitioner challenging Annexure-H order passed by the court below in CMP.733/2014 in Crime No.71/CR/EOW-1/13 of Pathanamthitta Sub Unit under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

2. The case was registered on the basis of a complaint given by the Officer of the petitioner bank alleging that the accused persons have misappropriated huge amount to the tune of more than 1crore and thereby they have committed the offence punishable under Sections 409, 420 read with Sec. 34 of the Indian Penal Code. On the basis of the complaint given, Pathanamthitta Police has registered Annexure-B crime as Crime No. 1379/2010 of Pathanamthitta Police Station against respondents 2 to 4 herein alleging offences under Sections 409 & 420 read with Sec. 34 of the Indian Penal

Code. During the course of investigation, certain gold ornaments were seized from the possession of the accused persons and also some cash alleging that the gold ornaments were purchased utilising the embezzled amount due to the bank. They filed Annexure-E application under Section 451 of the Code for return of the gold ornaments for interim custody. The Investigating Officer filed a statement stating that they have no objection in returning the gold ornaments. The accused filed Annexure-G objection praying for dismissal of the application. The cash recovered has already been returned to the bank on certain conditions. After considering the objections raised, the court below dismissed the application by the impugned Annexure-H order which is being challenged before this Court. After registering the crime, the case was transferred to Crime Branch and it was re-registered as Crime No.71/CR/EOW-1/KLM/13 of that sub unit.

3. Heard Sri. S. Srikumar, Senior Counsel appearing for the petitioner bank and Sri. Ajish K Sasi

counsel appearing for respondents 2 to 4 and Smt. Seena Ramakrishnan, Public Prosecutor appearing for the first respondent State.

4. First respondent filed a statement before this Court also stating that they have no objection in releasing the article on getting sufficient securities. Senior counsel appearing for the petitioner submitted that the gold ornaments were purchased by using the amount misappropriated while second respondent was working under the bank with the connivance of other accused persons. They are prepared to furnish security and abide by any condition imposed by this Court. The application was opposed by the counsel for the respondents 2 to 4 on the ground that if it is returned to the petitioner, there is possibility of tampering and that will affect the ultimate trial of the case and ultimately if it is found that they are not entitled for the gold ornaments, they will be the loser in the case. Public Prosecutor submitted that they have no objection in releasing the gold ornaments to the petitioner on conditions.

5. It is an admitted fact that second respondent was working under the petitioner bank and on the basis of Annexure-A complaint filed by the bank, Annexure-B first information report (crime) was registered against respondents 2 to 4 alleging offence under Sections 406 and 420 r/w Sec.34 of the Indian Penal Code. The earlier part of investigation was conducted by the Circle Inspector of Police, Pathanamthitta and he had recovered certain gold ornaments and also cash during the course of investigation and produced the same before court. The cash that has been recovered was returned to the petitioner bank as interim custody on certain conditions. Now they filed Annexure-E petition for return of the gold ornaments as interim custody to them. In the meantime, investigation was transferred to Crime Branch and they are now conducting the investigation. They filed objection to petition filed by the petitioner stating that they have no objection in returning the gold ornaments. But the identity of the gold ornaments must be preserved and sufficient securities will have to be obtained from

them. The grievance of the respondents 2 to 4 was that it is not a stolen article and there is nothing on record to show that these articles were purchased using the alleged misappropriated amount. If ultimately the case is ended in their favour they will losing the ornaments.

6. Whether the amount was misappropriated and whether the ornaments were purchased using the misappropriated amount are matters to be considered by the court at the time of trial on the basis of the material placed by the Investigating Officer after filing final report. If the gold ornaments were purchased using the embezzled amount ultimately if it is found that the amount was misappropriated, then petitioner bank will be entitled to get back the amount as well as the ornaments said to have been purchased utilizing that amount. If the court found later that no misappropriation proved and the ornaments were not purchased using the alleged embezzled amount, and if the respondents 2 to 4 are able to establish the source of their purchase, then it is likely to be returned to them while considering disposal

of the property by the trial court after completion of the trial of the case. The apprehension of the accused was that if it is given to the bank, there is possibility of tampering. That apprehension can be removed by imposing certain conditions. Instead of handing over to the accused persons, giving interim custody of the articles to the bank will be always safe and that will protect the interest of the both parties as well. So considering the circumstances, this court feel that the order passed by the Court below be set aside and application has to be allowed on certain conditions. The impugned order passed by the court below evidenced by Annexure-H is set aside and the application is allowed on following conditions.

1. The court below is directed to return the gold ornaments seized and kept in court custody involved in this crime to the petitioner bank on executing a bond by the authorised representative of the bank for the amount fixed by the court after valuing the gold ornaments with two solvent sureties for such amount to

the satisfaction of the court below.

2. On further condition that petitioner shall produce bank guarantee for the value of the gold ornaments fixed by the court below after ascertaining its value for a period of two years in the name of the court and continue to renew the same till the disposal of the case and final orders regarding custody of the articles passed by the court below under Section 452 of the Code.

3. The petitioner bank is directed not to make any alteration of the gold ornaments and they are directed to keep the same in same condition till the disposal of the case.

4. The court below is directed to take photographs of the gold ornaments in the presence of the counsel for the accused, and the petitioner bank and Public Prosecutor and the Investigating Officer and prepare an inventory and keep the same in file so as to use the same later as evidence if required before releasing the articles to them.

5. The authorised representative of the bank shall file an undertaking in the form of an affidavit that the bank will not make any alteration of the gold ornaments entrusted to them as interim custody and they are prepared to produce the same before the court below as and when required in connection with the trial of the case and they will not sell or utilise the same without the permission of the court below.

With the above direction and observation, the petition is allowed and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately by fax.

**Sd/-K.RAMAKRISHNAN,
Judge**

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