

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

Crl.MC.No. 3551 of 2014 ()

**CC 2451/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II,ERNAKULAM
CRIME NO. 485/2002 OF TOWN NORTH POLICE STATION, ERNAKULAM**
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PETITIONER/DEFACTO COMPLAINANT:

**ROBY GEORGE, AGED 43 YEARS
S/O.LATE GEORGE, EDASSERY HOUSE, VYLOPILLY LANE
AZAD ROAD, ELAMKULAM VILLAGE, KALOOR
ERNAKULAM-682017.**

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. THE SUB INSPECTOR OF POLICE
TOWN NORTH POLICE STATION, ERNAKULAM-682018.**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 3551 of 2014 ()

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE-A1: COPY OF THE F.I.R. IN CRIME NO.485/2002 OF TOWN NORTH POLICE STATION, ERNAKULAM.

ANNEXURE-A2: COPY OF THE C.M.P.NO.700/2014.

ANNEXURE-A3: COPY OF THE ORDER OF THE JFMC-II, ERNAKULAM IN C.M.P.NO.700/2014 IN C.C.NO.2451/2011 DATED 20.02.2014.

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.3551 of 2014

Dated this the 6th day of March, 2015

O R D E R

The petitioner herein is the defacto complainant in Crime No.485/2002 of the Town North Police Station, Ernakulam involving the offence under Section 379 read with 34 IPC. Prosecution case is that two persons snatched away gold chain belonging to the defacto complainant, in the night of 18.09.2003. The 1st accused faced trial before the trial court and obtained a judgment of acquittal in the absence of any evidence or prove the identity of the persons, who snatched away the gold ornaments. The case against the 2nd accused was split up and refiled, and it is now pending before the learned Magistrate as C.C.No.2451/2011. Pending the proceeding, the defacto complainant filed an application for interim custody of the gold ingot seized by the police during investigation. What the complainant lost is a gold ornament, but what is recovered is a gold ingot. So, there is no question of the ornament as such being identified during trial. The learned Magistrate granted relief on certain conditions as per

the order dated 20.02.2014 in C.M.P.No.700/2014. The petitioner is aggrieved by the conditions 4 and 5, that he shall not make any material alterations to the gold ingot, or sell, or dispose it otherwise, and that he shall produce the property as and when required. On a perusal of the judgment in C.C.No.726/2003 by which the 1st accused obtained acquittal, I find that the prosecution could not adduce any evidence proving the exact identity of the persons who snatched away the gold ornament. The 1st accused faced trial without making a claim over the gold ingot seized by the police. There is also direction to produce photographs of the properties. This photograph will suffice for identification of the gold ingot seized by the police. The above conditions imposed by the court below will defeat the very purpose for which the property is received by the petitioner in interim custody. I find no possibility of the property being released to the accused in the present circumstances. Hence, the objectionable conditions can be set aside.

In the result, this Crl.M.C. is allowed. The condition Nos.4 and 5 imposed by the court below as per order dated 20.02.2014 in CMP No.700/2014 will stand accordingly set aside.

Sd/-

P. UBAID, JUDGE

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