

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

Crl.MC.No. 4837 of 2015

**ORDERDATED 10-07-2015 IN CRL.MP 4079/2014 OF JUDICIAL FIRST CLASS
MAGISTRATE OF THE I CLASS-III, KOTTAYAM
CRIME NO. 510/2014 OF KUMARAKOM POLICE STATION, KOTTAYAM**
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PETITIONER(S)/2ND RESPONDENT:

**V.V.SAHADDEVAN,
VANDOPPUMTHARA HOUSE, NEAR VETTIKKADU JAMA MASJID,
THIRUVARPU, KOTTAYAM, PIN-686 035.**

**BY ADVS.SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN**

RESPONDENT(S)/PETITIONER AND 1ST RESPONDENT:

- 1. AJEESH C.T.,
S/O.THANKAPPAN, CHAMACKALAYIL, MANNAR KARA,
KADUTHURUTHY, KOTTAYAM DISTRICT, PIN - 686 001.**
- 2. THE SUB INSPECTOR OF POLICE,
KUMARAKOM, KUMARAKOM POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM - 682 031.**
- 3. THE SUB INSPECTOR OF POLICE,
KADUTHURUTHY, KADUTHURUTHY POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM - 682 031.**

R2 & R3 BY PUBLIC PROSECUTOR SMT.MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
07-10-2015 ALONG WITH CRL.MC.4838/2015 THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNX.A1 - TRUE COPY OF THE AGREEMENT DATED 03.12.2013.

**ANNX.A2 - TRUE COPY OF THE ORDER PASSED BY THE HON'BLE HIGH COURT O
KERALA IN CRL.MC. NO.4719 OF 2014 DATED 20TH OF AUGUST 2014.**

**ANNX.A3 - TRUE COPY OF THE COMMON ORDER DATED 10TH OF JULY 2015 PASSED
BY THE JUDICIAL MAGISTRATE OF I CLASS-III, KOTTAYAM IN
CRL.M.P.NO.4079/2014.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B.KEMAL PASHA, J.

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Crl.M.C. Nos. 4837 & 4838 of 2015

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Dated this the 7th day of October, 2015

ORDER

The petitioner in both these Crl.M.Cs. is the owner of 40 HP High Speed Diesel Tractor having Registration No.KL-05-AF-4598, purchased by him by paying an amount of ₹6,64,000/- and after availing a loan of ₹5,00,000/- from the 2nd respondent financier. Subsequently, he sold the Tractor to the 1st respondent through Annexure A1 Sale Note for a consideration of ₹5,00,000/- on 03.12.2013. The 1st respondent paid an amount of ₹2,00,000/- as part of consideration, and agreed to pay the balance amount towards the discharge of the liability to the 2nd respondent.

2. Thereafter, the 1st respondent has not cared to pay any amount towards the hire purchase transaction to the 2nd respondent. When the 2nd respondent proceeded against the

petitioner for the recovery of the amount, the petitioner filed a private complaint before the Judicial First Class Magistrate's Court-III, Kottayam against the 1st respondent, which was referred to the Police under Section 156(3) Cr.P.C. A crime was registered as Crime No.510 of 2014 of the Kumarakom Police Station. After investigation, the Police referred the crime by stating it as one of a civil nature.

3. Aggrieved by the said order, the petitioner had approached this Court through Crl.M.C.No.4719 of 2014. Vide Annexure A2 order, the Crl.M.C. was disposed of by this Court by directing the petitioner to approach the court below with a protest complaint. The petitioner filed a protest complaint and filed an application to get the Tractor seized from the possession of the 1st respondent. Consequently, a search warrant was issued and the Tractor was seized. Thereafter, the petitioner filed Crl.M.P.No.4406 of 2014 and the 1st respondent filed Crl.M.P.No.4079 of 2014 before the court below seeking interim custody of the Tractor under Section 451 Cr.P.C. The court

below vide Annexure A3 order allowed Crl.M.P.No.4079 of 2014 filed by the 1st respondent, and dismissed Crl.M.P.No.4406 of 2014 filed by the petitioner. Crl.M.C.No.4838 of 2015 is filed against the dismissal of Crl.M.P.No.4406 of 2014. Crl.M.C.No.4837 of 2015 is filed against the order allowing Crl.M.P.No.4079 of 2014.

4. Notices were issued to respondents 1 and 2. Even though notices have been served on them there is no representation for respondents 1 and 2.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

6. It is the fact that still the petitioner is the registered owner of the said Tractor. The petitioner himself admits that at the time of the sale of the Tractor to the 1st respondent, an amount of ₹2,00,000/- as part of consideration was received. The balance amount of ₹3,00,000/- was agreed to be paid towards the financial liability of the said Tractor, to the 2nd respondent. Still the 2nd respondent is not coming forward to

claim the Tractor. If the Tractor continues to be in the possession of the 1st respondent and the hire purchase amounts are not paid, definitely the petitioner would be put in hot waters. The petitioner is an unpaid seller. In such case, especially when the 1st respondent is not coming forward to resist the claims forwarded by the petitioner in these Crl.M.C.s, Annexure A3 order is liable to be reversed.

In the result, these Crl.M.Cs are allowed and Annexure A3 order passed by the court below is reversed. Crl.M.P No.4406 of 2014 is allowed and Crl.M.P No.4079 of 2014 of the court below is dismissed. The court below shall give the interim custody of the Tractor to the petitioner on his executing a bond for ₹7,00,000/- with two solvent sureties for the like sum each to the satisfaction of the court below and subject to the following conditions:

- (i) The petitioner shall produce the Tractor as and when required before the investigating officer or the court below.

(ii) The petitioner shall not encumber or alienate the Tractor except with the permission of the court below.

(iii) The petitioner shall not make use of the Tractor for any illegal purpose.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/7/10/15

// True Copy //

P.A. To Judge