

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

Crl.MC.No. 5024 of 2015 ()

**CRL.MP.NO. 2789/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KATTAPPANA
CRIME NO. 857/2015 OF KATTAPPANA POLICE STATION, IDUKKI**

PETITIONER/ACCUSED :

**JAIMON C.G.,
S/O.GOPALAKRISHNAN NAIR, CHERIYIL HOUSE
UPPUKANDAM KARA, ERATTAYAR VILLAGE, IDUKKI-685 510**

BY ADV. SRI.SEBASTIAN JOSEPH (KURISUMMOOTTIL)

RESPONDENT/COMPLAINANT :

**1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

**2. ASSISTANT COMMISSIONER OF EXCISE,
EXCISE RANGE, THODUPUZHA-685 585.**

R1 & R2 BY PUBLIC PROSECUTOR SRI. R. GITHESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 06-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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Crl.MC.No. 5024 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE A : TRUE COPY OF THE FIR IN CRIME NO.857/2015 OF
 KATTAPPANA POLICE STATION.**

**ANNEXURE B : CERTIFIED COPY OF THE ORDER DATED 24TH DAY
 OF JULY,2015, IN CMP.NO2789/2015 OF THE JUDICIAL FIRST
 CLASS MAGISTRATE COURT, KATTAPPANA.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No.5024 of 2015

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Dated this the 6th day of August, 2015

ORDER

The order under challenge is the Annexure B order dated 24/07/2015 rendered by the Judicial First Class Magistrate Court, Kattappana on C.M.P.No.2789/2015 filed in Crime No.857/2015 of Kattappana Police Station, whereby the prayer of the petitioner is for the interim custody of the Autorickshaw seized in that crime has been declined.

2. Heard Sri. Sebastian Joseph, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

3. It is common ground that what was alleged to be concealed in the said seized vehicle was 6.65 ltrs. of Indian made Foreign Liquor whereby the impugned crime for offence under Section 55(a)(1) of the Abkari Act has been registered against the petitioner who is the sole accused therein. The Investigating Officer had filed a report before the court below and opposed the

application on the ground that he is likely to conceal the said vehicle from the due process of law and that he is also likely to commit the similar offence using the said vehicle etc. On a consideration of the totality of the facts and circumstances of the case and on a perusal of the impugned Annexure B order this Court is of the considered opinion that the said order is not in consonance with the well established legal principles laid down by the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat* reported in 2003 SCC (Crl.) 1943=2003 (2) KLT 1089 (SC). In this view of the matter the impugned order is set aside and it is ordered that the interim custody of the seized Autorickshaw will be granted to the petitioner on subject to the petitioner filing an affidavit on undertaking before the court below that he will not transfer, alienate or encumber the vehicle in any manner and that he will not dismantle the vehicle etc. until the conclusion of the trial, and will produce the vehicle as and when required by the court below. It is further ordered that the value of the seized vehicle shall be got assessed by the Assistant Motor Vehicle Inspector concerned and based on such valuation, the petitioner shall execute a bond for

such value and shall also furnish two solvent sureties for the like sum each to the satisfaction of the learned Magistrate concerned. The Investigating Officer if he so chooses, will be at liberty to ensure that necessary photographs/videographs of the vehicle from all necessary angles are taken and a mahazar is also prepared in accordance with the prescribed procedure if not already done so far. After fulfillment of these conditions the interim custody of the vehicle will be released to the petitioner without much delay.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL