

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

Crl.MC.No. 5067 of 2015

**C.M.P.NO.1858 OF 2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
IRINJALAKUDA**

CRIME NO. 2003/2014 OF PUDUKKAD POLICE STATION , THRISSUR DISTRICT

PETITIONER(S)/3RD PARTY :

**STIJIL JOSE, AGED 23 YEARS,
S/O.JOSE, THEKKANATH HOUSE, CHENGAMANAD,
ALUVA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO**

RESPONDENT(S)/STATE OF KERALA :

**THE STATE OF KERALA,
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
PUDUKKAD POLICE STATION, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 07-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE I : A TRUE COPY OF THE CLAIM PETITION CMP NO.1858/2015
IN CRIME NO.2003 OF 2014 DATED 26.02.2015.**

**ANNEXURE II: A TRUE COPY OF THE ORDER IN CMP NO.1858 OF 2015 IN
CRIME NO.2003 OF 2014, DATED 09.03.2015.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 5067 of 2015

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Dated this the 7th day of August, 2015

ORDER

The order under challenge in this Crl.M.C. is the one at Anx.II dated 9.3.2015 rendered by the Judicial First Class Magistrate's Court, Irinjalakuda, on Crl.M.P.No.1858/2015 in Crime No.2003/2014 of Pudukkad Police Station, registered for offences under Secs.392, 411 read with 34 of the I.P.C., whereby the prayer of the petitioner for interim custody of the motor cycle seized in connection with the impugned crime was declined.

2. Heard Sri.Sreekumar.G.Chelur, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. The petitioner is not am accused in the impugned crime. But the motor cycle belonging to him has been allegedly used in the commission of the impugned crime, which was said to have been committed by the accused therein. The court below appears to have been persuaded to pass the impugned order by taking note of the

fact that the accused in the offence have involved in so many similar crimes and even that the motor cycle in question has also been used for the purpose of committing offences in various parts of the Ernakulam and Thrissur districts, etc.

4. When this matter came up for consideration Sri.Sreekumar.G.Chelur, learned counsel appearing for the petitioner asserted on the basis of the instructions that the petitioner is not an accused in this crime and further that the motor cycle in question has not been involved in any other crimes, except the impugned one and that one of the accused, who is known to the petitioner, borrowed the petitioner's vehicle, and that the petitioner had never used the vehicle for commission of crimes like the present one.

5. The learned Prosecutor concerned was requested by this Court to get instruction as to whether the motor cycle in question was involved in any other previous crime referred to in the impugned order. To this pointed aspect, the learned Prosecutor, on instructions, submitted now that the petitioner is not an accused in this crime and that the seized motor cycle has not been involved in any other previous crimes and it has been involved in a crime for the first time only now. Therefore, the very factual foundation for the

refusal of the prayer is rather shaky. Indisputably, the petitioner is not an accused in the crime. The respondents have no case that the petitioner has involved in any other crime. Today also it is admitted by the respondents that the motor cycle in question has not been involved in any other crime. In this view of the matter, the impugned order is set aside.

6. The petitioner shall file an affidavit unconditionally undertaking before the court below that he will not sell, transfer alienate or encumber the motor cycle in any manner, until the conclusion of the trial. The petitioner shall execute a bond for the value of the motor cycle and shall furnish two solvent sureties for the like sum each to the satisfaction of the court below concerned. The investigating officer will be at liberty to take necessary photograph/videographs of the vehicle from the necessary angles and also prepare a mahazar showing the details of the vehicle in accordance with the prescribed procedure. On completion of all these formalities, the interim custody of the seized motor cycle shall be given to the petitioner forthwith. It is made clear that this order will be subject to the orders to be passed by the competent criminal court on the question of final custody of the motor cycle to be

decided at the time of the conclusion of the trial.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge