IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 29TH DAY OF AUGUST 2014/7TH BHADRA, 1936

Crl.MC.No. 4266 of 2014 ()

CRIME NO. 419/2014 OF AROOR POLICE STATION , ALAPPUZHA

PETITIONER(S)/ACCUSED:

SHAJI, AGED 24 YEARS
POOVATHIL HOSE, AROOR PANCHAYATH WARD NO.XI
CHANDIROOR.P.O, CHERTHALA, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.K.SAJEEV

RESPONDENT(S)/COMPLAINANT:
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1. **STATE OF KERALA,**
   REPRESENTED BY THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM-682031.

2. **SUB INSPECTOR OF POLICE,**
   AROOR POLICE STATION, AROOR.P.O, CHERTHALA
   ALAPPUZHA DISTRICT, PIN-688537.

3. **THE SUB DIVISIONAL MAGISTRATE,**
   ALAPPUZHA, PIN-688001.

BY PUBLIC PROSECUTOR SMT. S. HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29-08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 4266 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-1 COPY OF THE AGREEMENT FOR SALE DATED 05.12.2013 EXECUTED BETWEEN THE PETITIONERS AND OTHERS.

ANNEXURE-2 COPY OF THE AGREEMENT FOR SALE DATED 06.05.2014 EXECUTED BETWEEN THE WIFE (ANITHA) OF THE PETITIONER AND OTHERS.

ANNEXURE-3 COPY OF F.I.R.419/2014 OF THE AROOR POLICE STATION.

ANNEXURE-4 COPY OF THE PETITION AND THE AFFIDAVIT FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

P.A. TO JUDGE

SKV

K.RAMAKRISHNAN, J

CRL.M.C. No.4266 OF 2014

Dated this the 29th day of August, 2014

ORDER

This is an application filed by the petitioner giving direction to the 3rd respondent Sub Divisional Magistrate, Alappuzha to return the amount seized by the 2nd respondent and also to quash the First Information Report in Crime No.419 of 2014 under Section of 482 of Code of Criminal Procedure.

2. It is alleged in the petition that on 12.5.2014 the 2nd respondent conducted a raid in the house of the petitioner under the guise of Operation Kubera and the raiding officer found Rs.10,54,900/- in the house. Though it was mentioned that the amount was obtained by way of advance received towards the sale consideration and also the amount kept by the petitioner in connection with his business, they did not heed for the same, but seized the amount and registered Annexure 3 First Information Report as Crime No.419 of 2014 of Aroor Police Station of Alappuzha District under Section 102 Code of Criminal

Procedure and produced the First Information Report and article seized before the 3rd respondent. There is no offence committed. So the registration of crime and also the seizure are not legal. So the petitioner has no other remedy except to approach this Court seeking the following relief:

> "a. Call for the records in Annexure-3 First Information Report and quash the same and all further proceedings initiated there under against the petitioner.
>
> b. Direct the 3rd respondent to release the money produced in Crime No.419 of 2014 of the Aroor Police Station to the petitioner.
>
> c. Award the cost of the proceedings."

3 Earlier the 2nd respondent has filed a statement which reads as follows:

> "Statement of facts submitted by the Sub Inspector of Police Aroor (2nd respondent) on behalf of State of Kerala (1st respondent) in respect of in Crl.M.C.No.4266/2014 (Cr.419/2014 u/s 102 CrPC of Aroor Police Station) filed by Sri. Shaji.
>
> With utmost reverence and humble submission I would like to submit the following facts related to the aforesaid Crl.M.C.

As per the direction of Government of Kerala "Operation Kubera" is conducted also in Aroor Police Station which is against the unauthorised Money Lenders/Blade Mafia in society. As the part of it, on 12.5.2014 the then SHO conducted raid at the house of the petitioner as per the reliable information received and then made the legal formalities and conducted raid.

During the raid police detected and seized an amount of Rs.10,54,900/- (Ten Lakh Fifty four thousand Nine hundred only) which was kept in a suit case inside their bed room of the petitioner. Thus the SHO questioned their residents in the absence of the petitioner about the source and purpose of the same amount is keeping in his house. Brother of the petitioner failed then for submitting a proper replay about the cash and did not produced any documents related to the money. Then Police seized the cash after observing all formalities and returned to the station thereafter registered a case as Cr.419/2014 u/s 102 CrPC and submitted the FIR before the Sub Divisional Magistrate Court Alappuzha o 12.5.2014. Police submitted the detected money from the house of the petitioner before Sub Divisional Magistrate Court Alappuzha in KPF 151 (a) form and the court received the amount as TR No.52/2014.

Thereafter investigation commenced in proper way for

> revealing their source of the money on investigation the petitioner expressed that he is a business man the money was keeping for buy some land which is laying very near to his house.
>
> I suspect that the petitioner is a link to the Blade Mafia. So many petitions are received ove phone against the petitioner revealing that he is earning huge amount as interest. More evidences are to be collected for proving the illegal money transaction of the petitioner. Hence I humbly request that the petition for quashing the FIR may be rejected.
>
> However Police shall act according to the direction of Hon'ble High Court of Kerala."

4. When it was pointed out as to how the crime has been registered under Section 102 Code of Criminal Procedure and First Information Report sent to the Sub Divisional Magistrate Court, the Government Pleader sought time on the last hearing date and when the case came up for hearing today, the learned Government Pleader submitted that during investigation, it was revealed that the petitioner was conducting illegal money lending business and so they have incorporated Section 3 and 17 of Kerala Money Lenders Act and sent a report to

the Sub Divisional Magistrate to transfer the case to the concerned Magistrate Court viz., Judicial 1st Class Magistrate Court-II, Cherthala and similar report has been filed before the Magistrate Court Cherthala as well.

5. The counsel for the petitioner submitted that earlier they have no such case. Subsequently, it has been falsely incorporated. Heard the Government Pleader also.

5. It is true that originally the crime was registered as Crime No.419 of 2014 of Aroor Police Station under Section 102 of Code of Criminal Procedure on the mere suspicion of commission of certain offence and it is on that basis First Information Report and articles seized were produced before the Sub Divisional Magistrate Court for further action. Subsequently, it is seen from the submission made by the learned Government Pleader that Section 3 and 17 of Money Lenders Act having included, as it was revealed during investigation according to the prosecution that petitioner has involved in illegal money lending business. I am not at this stage going to those questions, as it is a matter

under investigation and ultimately if final report is filed the petitioner is at liberty to challenge the same in appropriate forum, if he is of the view that no offence under that Act is attracted. So at this stage it cannot be said that the petitioner entitled to get the First Information Report quashed as now penal provision have been incorporated and now reports have been filed to that effect and the investigation is in the preliminary stage.

6. As regard the return of the amount, if the report has been filed before the Judicial First Class Magistrate Court No.II, Cherthala, then that court will be getting jurisdiction to entertain an application for considering the interim custody of the amount seized under Section 451 of Code of Criminal Procedure and the petitioner can very well approach that court and file an application and if such an application is filed, then the learned Magistrate is entitled to consider and pass appropriate orders in that application in accordance with law. If the petitioner files an application for that purpose, then the learned Magistrate is directed to consider and dispose of the

application for interim custody as expeditiously as possible at any rate within two weeks from the date of filing of the application and getting the amount and report to that court. The 3rd respondent is directed to transfer the case records as requested by the 2nd respondent to the Judicial First Class Magistrate Court-II, Cherthala including the amount seized within one weeks from the date of receipt of this order and the 2nd respondent is directed to take steps to get these documents and articles transferred as directed by this Court within that time. With the above observation and direction the petition is disposed of

Officer is directed to communicate this order to the Judicial First Class Magistrate Court-II, Cherthala and also to the 3rd respondent viz., Sub Divisional Magistrate, Alappuzha for compliance of this order immediately.

Sd/-
K.RAMAKRISHNAN, JUDGE.

/True Copy/

P.A. To Judge

SKV