

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

Crl.MC.No. 6138 of 2015

**CRL.M.P.NO.201/2015 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
KALAMASSERY**

**CRIME NO.519/2015 OF KALAMASSERY POLICE STATION,
ERNAKULAM DISTRICT**

PETITIONER(S)/PETITIONER/ACCUSED :

**VIJAYA BANK(GOVERNMENT OF INDIA UNDERTAKING),
BROADWAY BRANCH, ERNAKULAM,
REPRESENTED BY ITS SENIOR MANAGER VISHWANATH S.P.,
VIJAYA BANK, POST OFFICE LINK ROAD, BROADWAY,
ERNAKULAM -682 031.**

**BY ADVS.SRI.SOORAJ T.ELENJICKAL
SRI.K.NANDAKUMAR
SMT.V.A.HARITHA
SMT.MARY RESHMA GEORGE
SMT.P.M.MAZNA MANSOOR**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA,
THROUGH THE SUB INSPECTOR OF POLICE,
KALAMASSERY POLICE STATION, ERNAKULAM,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,KOCHI- 682 031.**
- 2. MANUVAL JOSEPH,
S/O.ANTONY, PUTHENVEETIL HOUSE, AMBADIMOOLA,
CHEMBUMUKKU, KAKKANAD, ERNAKULAM - 682 021.**

R1 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE-1:** THE TRUE COPY OF THE TEMPORARY CERTIFICATE OF REGISTRATION OF THE VEHICLE ISSUED FROM THE MOTOR VEHICLES DEPARTMENT
- ANNEXURE-2:** THE TRUE COPY OF THE REGISTERED NOTICE DATED 14.05.2015 ISSUED FROM THE BANK TO THE PETITIONER AND ACKNOWLEDGEMENT FOR THE SAME.
- ANNEXURE-3:** THE TRUE COPY OF THE FIR LODGED IN CRIME NO.519/2015 OF KALAMASSERY POLICE STATION.
- ANNEXURE-4:** THE TRUE COPY OF THE ORDER DATED 28.05.2015 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY IN CMP NO.23/2015.
- ANNEXURE-5:** THE TRUE COPY OF CMP NO.86/2015 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS COURT, KALAMASSERY.
- ANNEXURE-5(A):** THE TRUE COPY OF THE LIST OF DOCUMENTS PRODUCED ALONG WITH CMP NO.86/2015.
- ANNEXURE-6:** THE TRUE COPY OF THE ORDER DATED 18.05.2015 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY IN CMP NO.86/2015.
- ANNEXURE-7:** THE TRUE COPY OF THE CRIMINAL MP NO.201/2015 MOVED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY.
- ANNEXURE-8:** THE CERTIFIED COPY OF THE ORDER DATED 16.07.2015 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY IN CRIMINAL MP NO.201/2015.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

B.KEMAL PASHA, J.

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Crl.M.C. No. 6138 of 2015

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Dated this the 18th day of September, 2015

ORDER

A Mahindra 'XUV M/CAB' vehicle bearing a temporary Registration No.KL-39H-Temp-7620 is the subject matter of Crime No.519/2015 of the Kalamassery Police Station, registered for the offences under Sections 120B, 395, 363, 506(i), 465 and 471 IPC. The said vehicle was seized by the Police during investigation and the same has been produced before the court below. The said vehicle was purchased by the de facto complainant with the financial nursing of Vijaya Bank, which is a Government of India Undertaking.

2. Initially, the de facto complainant has approached the court below for getting the vehicle released under Section 451 Cr.P.C. Noting down the defects in the registration of the vehicle, the court below issued a notice to the petitioner bank. Then, the bank came forward and

filed an objection against C.M.P.No.23/2015 preferred by the de facto complainant. When the bank objected it, the de facto complainant did not press Crl.M.P.No.23/2015 and made an endorsement to the effect that he has no objection in handing over the vehicle to the petitioner bank.

3. Thereafter, the petitioner has preferred C.M.P.No.86/2015 before the court below seeking the custody of the vehicle under Section 451 Cr.P.C. The court below allowed C.M.P.No.86/2015 through Annexure 6 order by imposing conditions 1 to 6. The 1st condition is that the petitioner shall execute a bond for ₹15 lakhs with two solvent sureties for the like sum each. The 3rd condition is that the petitioner shall not alter, transfer or otherwise dispose off the vehicle during the pendency of the trial, etc. Condition No.5 is to the effect that the petitioner shall produce the vehicle as and when required by the court. These conditions are under challenge.

4. When the petitioner is a Public Sector Undertaking,

owned by Government of India, condition No.1 is liable to be lifted. Regarding condition Nos.3 and 5, it seems that if the vehicle is kept idle till the final disposal of the case, it will get automatically ruined and in such case, the de facto complainant as well as the bank will be put to severe financial loss. When the petitioner bank sustains any loss, it is loss to the public at large. In such a case, going by the dictums in **Sunderbhai Ambalal Desai v. State of Gujarat** [AIR 2003 SC 638] and **General Insurance Council and Others v. State of Andhra Pradesh and Others** [2010 (6) SCC 768], the vehicle has to be released to the bank with permission to dispose of the vehicle after complying with some other conditions.

5. In Paragraph 18 of **Sunderbhai Ambalal Desai's** case (supra), it was held that -

“In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

6. In **General Insurance Council and Others'** case (supra), it was held that the vehicle could be released, in such case, on an undertaking by the Insurance Company. In the present case, in the place of Insurance Company, the bank is the party and therefore, the vehicle can be released to the bank on an undertaking by the bank.

7. In the result, this Court is satisfied that Annexure 6 order as well as Annexure 8 order passed by the court below requires modification.

8. Consequently, this Crl.M.C is allowed and conditions 1, 3, and 5 imposed by the court below in the impugned order are set aside. The vehicle is ordered to be released to the bank on the following terms and conditions:

- i. The photographs of the vehicle from all angles of the vehicle should be taken and it should be certified by the court below and the same should be kept among the records of the case.

ii. The learned Magistrate shall cause the preparation of a detailed mahazar with regard to the vehicle and the same shall be certified by the learned Magistrate and the same shall also be kept in the case records.

iii. The photographs and the said detailed mahazar, certified by the court below, shall be made use of at the trial for the identification of the vehicle.

iv. The bank is permitted to dispose of the vehicle and to appropriate the sale proceeds towards the loan amount.

Sd/-
B.KEMAL PASHA, JUDGE