

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

Cr1.MC.No. 5001 of 2014 ()

Cr1.MC 833/2013 of HIGH COURT OF KERALA DATED 04-04-2013

CC 167/2013 of CHIEF JUDICIAL MAGISTRATE'S COURT, ALAPPUZHA

CRIME NO. 124/2012 OF ALAPPUZHA NORTH POLICE STATION ,
ALAPPUZHA

PETITIONER/CW4:

BABYCHAN JOSEPH,
S/O.JOSEPH, KALLUKALAM VEEDU, VAZHAPPALLY KARA,
VAZHAPPALLY EAST VILLAGE P.O., CHANGANASSERY TALUK,
KOTTAYAM DISTRICT.

BY ADVS.SRI.B.S.SWATHY KUMAR
SRI.REMYA MURALI
SRI.A.K.RAJESH
SRI.VENKATESH GOPI

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, KOCHI-682031.

BY SR.PUBLIC PROSECUTOR SRI.C.RASHEED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 5001 of 2014 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: COPY OF THE JUDGMENT IN CRL.M.C.NO.833/2013 DATED
4.4.2013.

ANNEXURE-B: COPY OF THE ORDER IN C.C.NO.167/2013 DATED
7.8.2014 OF THE CHIEF JUDICIAL MAGISTRATE COURT, ALAPPUZHA.

ANNEXURE-C: COPY OF THE FINAL REPORT IN CRIME NO.124/2012
DATED 12.2.2012 OF THE ALAPPUZHA POLICE STATION.

RESPONDENT'S ANNEXURES:

NIL

// True Copy //

P.A. To Judge

DSV/17/10/15

B.KEMAL PASHA, J.

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Crl.M.C. No. 5001 of 2014

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Dated this the 13th day of October, 2015

ORDER

Annexure-B order dated 07.08.2014, passed by the Chief Judicial Magistrate's Court, Alappuzha, thereby directing the petitioner to produce 40 grams of gold involved in the said case for the purpose of marking it in evidence is under challenge.

2. It seems that in Crime No.359 of 2012 of the Punnapra Police Station, an investigation was carried out, and ultimately 104 grams of gold was seized from the petitioner. In the said 104 grams of gold, it seems that only 8 grams of gold was involved in Crime No.359 of 2012 of the Punnapra Police Station. Simultaneously, two other crimes were also registered as Crime No.124 of 2012 of the Alappuzha Town North Police Station and Crime No.308 of 2012 of the Mararikulam Police Station. In Crime No.124 of 2012, the gold involved is of 16

grams and in Crime No.308 of 2012, what was involved is 80 grams of gold. According to the learned Public Prosecutor, that is the reason why 104 grams of gold was seized.

3. Through Annexure-A order passed by this court, a quantity of 104 grams of gold seized from petitioner was released to the interim custody of the petitioner under Section 451 Cr.P.C. This Court has directed the petitioner to produce 8 grams of gold out of it for the trial of the case relating to Crime No.359 of 2015 of the Punnapra Police Station. This Court has made an observation in Page No.3 of Annexure-A order that:

“When the very case of the prosecution is that only 8 grams was stolen by the accused in that crime I am of the view that the gold ingot weighing 104 grams (according to the petitioner) can be entrusted to his interim custody.”

The order makes it clear that 104 grams of gold involved was released to the petitioner to his interim custody; that means, evidently under Section 451 Cr.P.C. Whether this Court has ordered the execution of bond or not, is not at all a question.

4. It seems that the trial of C.C.No.167 of 2013 of the Chief Judicial Magistrate's Court, Alappuzha is being prolonged for the want of material object in the case. When 16 grams of gold is the gold involved in the Crime relating to C.C.No.167 of 2013; that is, Crime No.124 of 2012 of the Alappuzha Town Police Station, the petitioner shall produce the said quantity of 16 grams of gold involved in the said case, as the same is also included in the total 104 grams of gold released to the petitioner under Section 451 Cr.P.C. It seems that the court below has committed an error in passing Annexure B order by directing the petitioner to produce 40 grams of gold before the said Court for the trial of C.C.No.167 of 2013.

5. The learned Public Prosecutor has explained that it was a mistake committed by the investigating officer in filing the statement before the court below, by showing the gold involved in the case as 40 grams instead of 16 grams. The actual quantity that is required for trial in the case is 16 grams of gold.

6. In the result, Annexure-B order is modified by directing the petitioner to produce 16 grams of gold for the purpose of evidence in the case. The petitioner shall produce 16 grams of gold before the court below within 15 days from today.

With the said modification in Annexure-B order, this Crl.M.C. is disposed of.

Sd/-
B.KEMAL PASHA
JUDGE

DSV/13/10/15

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P.A. To Judge