IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 2ND DAY OF NOVEMBER 2015/11TH KARTHIKA, 1937

Crl.MC.No. 6239 of 2015

ORDER DTD.3.9.2015 IN CRL.MP.3325/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, IRITTY
....

PETITIONER(S)/2ND ACCUSED:

SATVASHIL VASANTH MANE @ KIRAN, AGED 23 YEARS,
S/O. VASANT MANE, VILLAGE MAHULLI, KHANAPUR TALUK,
SANGLI DISTRICT, MAHARASTHRA,
EARLIER RESIDING AT THASGAV ROAD, COLLEGE CORNER,
SANGLI DISTRICT,
MAHARASHTRA AND PRESIDING RESIDING AT ROOM NO.3,
IST FLOOR, BELLARD ROAD, KANNUR,
KERALA.

BY ADV. SRI.C.P.MOHAMMED NIAS

RESPONDENT(S)/RESPONDENTS - STATE:
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1. STATE,
   REPRESENTED BY THE SUB INSPECTOR OF POLICE, IRITTY,
   THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SUPERINTENDENT OF CUSTOMS AND
   PREVENTIVE UNIT, THALASSERY.

3. UNION OF INDIA,
   INCOME TAX DEPARTMENT,
   REPRESENTED BY DEPUTY DIRECTOR OF
   INCOME TAX (INVESTIGATION),
   INCOME TAX OFFICE, KOZHIKODE.

R1 BY PUBLIC PROSECUTOR SMT.MAYA
R2 BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
R3 BY ADV. SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

msv/

Crl.MC.No. 6239 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE 1: TRUE COPY OF CRL.MP.NO.3325/2015 IN CRIME NO.1014/2015.

ANNEXURE 2: TRUE COPY OF CREDIT INVOICE NO.14992 DTD.3.8.2015 ISSUED BY MAHALASA SILVER SHOPPY PVT. LTD., AVENUE ROAD, BANGALORE.

ANNEUXRE 3: TRUE COPY OF CRL.MP.3308/2015 FILED BY THE 2ND RESPONDENT.

ANNEXURE 4: TRUE COPY OF CRL.MP.3314/2015 FILED THE 3RD RESPONDENT.

ANNEXURE 5: TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER AND THE 3RD RESPONDENT IN CRL.MP.3314/2015.

ANNEXURE 6: TRUE COPY OF THE PETITIONER FILED TO SUMMON MANAGER OF MAHALASA SILVER SHOPPY PVT. LTD., AVENUE ROAD, BANGALORE.

ANNEXURE 7: TRUE COPY OF THE ORDER DTD.3.9.2015 PASSED BY THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE, IRITTY.

RESPONDENT(S)' ANNEXURES:

ANNEXURE R1: THE TRUE COPY OF THE STATEMENT GIVEN BY THE PETITIONER CERTIFIED BY THE SUB INSPECTOR OF POLICE, IRITTY IN CRIME NO.1014/2015.

//TRUE COPY//

P.S.TO JUDGE

Msv/

[CR]

B. KEMAL PASHA, J.

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CRL.M.C. No.6239 of 2015

....

Dated this the 2nd day of November, 2015

<u>O R D E R</u>

On 04.08.2015, the Circle Inspector of Police, Iritty, intercepted a car, searched the body of two persons, who were travelling by the car, and consequently seized three gold bars weighing 3 kgs. from the possession of the driver of the car. In the inspection of the car, a secret chamber was traced out, from which Indian currency notes worth Rs.1,10,00,000/- were seized. The Inspector of Police, registered crime No.1014/2015 under Sections 41(1)(d) and 102 Cr.P.C.

2. The Inspector of Police, without delay, reported

the matter to the nearest Magistrate's Court, which is the court below, and also produced the entire materials seized, before the said court.

3. Claims were filed by the petitioner herein, as Crl.M.P.3325/2015, and the Superintendent of Customs, Customs Preventive Unit, Thalassery as Crl.M.C.3308/2015. The court below through Annexure 7 order dismissed Crl.M.P.No.3325/2015 and allowed Crl.M.P.No.3308/2015. Based on Annexure 7, the court below released the said three gold bars in question to the Superintendent of Customs, Customs Preventive Unit, Thalassery. The said orders are under challenge through this Crl.M.C. filed by the petitioner.

4. Heard the learned counsel for the petitioner Sri.C.P.Mohammed Nias, the learned Public Prosecutor for the first respondent and the learned counsel Sri.Sasthamangalam S. Ajithkumar for 2nd and 3rd Respondents.

5. It seems that both the aforesaid Crl.M.Ps. were filed by the petitioner as well as the Superintendent of Customs under Section 451 Cr.P.C. The court below, has in fact, allowed Crl.M.P.No.3308/2015 by considering the matter also as one coming under Section 451 Cr.P.C.

6. At the same time, it seems that Section 451 Cr.P.C. has no application at all in the present matter at this stage. As per Section 451 Cr.P.C., when any property is produced before any criminal court during an 'inquiry or trial', the court may make such order as it thinks fit for the 'proper custody' of such property pending the conclusion of the 'inquiry or trial'. Therefore, the stage of the proceedings contemplated under Section 451 Cr.P.C. is either inquiry or trial. The court can deal with the said question under Section 451 Cr.P.C. by deciding the person as to whom the said property is to be released to the *“proper custody*”. Such stage should be at the stage of an 'inquiry or trial' and such 'proper custody' also should be pending the conclusion of

the 'inquiry or trial'. If the stage of inquiry is over and the court decides to conduct the trial, then the stage of trial comes. In proceedings in which the matter terminates at the culmination of inquiry, the stage under Section 452 Cr.P.C. comes. On the termination of the trial, definitely the stage under Section 452 Cr.P.C. comes into play.

7. At the stage under Section 452 Cr.P.C., the court has to decide as to who is the person "entitled to possession". What is contemplated under Section 452 Cr.P.C. is the termination of the inquiry or trial. When the proceedings terminates on the conclusion of inquiry, then also Section 452 Cr.P.C. comes into play. When the proceedings end in trial, then also Section 452 Cr.P.C. comes in, and in such case the court has to decide not with regard to the *"proper custody"*; whereas the court has to decide the person who is *"entitled to possession*".

8. In cases wherein the seizure of property by any police officer is reported before 'the Magistrate' under the

provisions of the Code of Criminal Procedure, and the said property is not produced before 'a Criminal Court' during the inquiry or trial then, the stage under Section 457 Cr.P.C. comes. Under Section 457 Cr.P.C. also the court has to decide as to who is the person "entitled to possession" thereof.

9. As rightly pointed out by the learned counsel for the 2nd respondent, there is no inquiry or trial before the court below in this case and therefore, the petitioner is not entitled to claim custody of the property under Section 451 Cr.P.C. The same is the case with the 2nd respondent also. The learned counsel for the petitioner has pointed out that the 2nd respondent had also approached the court below with a claim under Section 451 Cr.P.C. and the said claim stands allowed.

10. The seizure and the consequent report in this case before the court below squarely falls within the realm of Section 102(3) Cr.P.C. When such a seizure is made and the

seizure is relating to a property brought in suspicious circumstances, the police officer who seized the property shall forthwith report the matter to the nearest Magistrate, and shall produce such property before Court except in cases wherein such property cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, etc.

11. Therefore, the act of the police in this case in reporting the matter to the Magistrate and in producing the property before the court below seems to be proper within the meaning of Section 102(3) Cr.P.C. Even in such case, further proceedings for the release of the property should be decided under Sections 451 and 452 or 457 Cr.P.C. When there is no inquiry or trial, neither Section 451 Cr.P.C. nor Section 452 Cr.P.C. are applicable in this case. Had the property been not produced before the court below in an inquiry or trial, the parities could have invoked the procedure

under Section 457 Cr.P.C. In all cases wherein the property is produced before the Magistrate, the court of the Magistrate is not powerless to rely on Section 457 Cr.P.C., for the disposal of such property. Only when the property is produced before such court 'in an inquiry or trial', the embargo to invoke the power under Section 457 Cr.P.C. comes. On looking into the scheme of the Code of Criminal Procedure, it seems that all such cases, which do not fall under the provisions of Sections 451 and 452 Cr.P.C., it squarely falls under Section 457 Cr.P.C.

12. Here, in this case, the stage at which the property was produced and even the stage at which the court below has passed the impugned order was neither the stage of inquiry nor trial. Therefore, the court below could have considered the matter only with the aid of Section 457 Cr.P.C. Matters being so, the court below ought not have allowed the claims mooted under Section 451 Cr.P.C. The impugned order passed by the court below by releasing the

property under Section 451 Cr.P.C., is therefore, not in accordance with law.

13. At the same time, when it is possible to take a view that the property was produced by the police on seizure under Section 102(3) Cr.PC. before the court below, not in an inquiry or trial, the court below could have decided the question as to who was the person entitled to possession of that property at that stage. At that stage, no doubt, the Customs Authorities were the persons entitled to the possession of the said property. Even though, it was through an order which was not in accordance with law, it seems that the property is handed over by the court below to the Customs Authorities for custody, for invoking the provisions of the Customs Act. The ultimate decision taken by the court below can be reckoned as one under Section 457 Cr.P.C.

14. It seems that presently, the property has been released to the custody of the 2nd respondent. The learned

counsel for the 2nd respondent has submitted that the property is presently deposited at the warehouse and now the matter is under adjudication proceedings within the meaning of the Customs Act, 1962.

15. The learned counsel for the 2nd respondent has pointed out that now the adjudication proceedings have been started by the Customs Authorities in the matter. The learned counsel for the petitioner has pointed out that in such case, the petitioner has got a right to approach the 2nd respondent or the concerned Customs Authorities, who are dealing with the matter, under Section 110-A of the Customs Act. In such case, it is true that pending adjudication proceedings, any goods, documents or other things seized under Section 110 of the Customs Act can be released to the owner, on the execution of a bond in proper form, with such security, as may be required by the Customs Authorities. For the same, the petitioner has to establish his ownership over the property before the Adjudicating Authority. Whether

the adjudication proceedings are initiated legally or not, is not a question at the time of invoking the power under Section 110-A of the Customs Act. What is contemplated under Section 110-A is that the said person making the claim should be the owner of the goods to be released, and he shall furnish such security and abide by such conditions as may be imposed by the Adjudicating Authority for the release of the goods to him.

16. However, the learned counsel for the petitioner has pointed out that the court below has taken the view that the gold involved in the case are smuggled articles. That should not weigh with the Adjudicating Authority or the Customs Authority who is dealing with the matter, while taking a decision. The said observations made by the court below are premature and out of place, and were not required in a matter like this. Moreover, this Court has found that the order passed by the court below under Section 451 Cr.P.C. is not legally sustainable. Therefore, all the

observations made by the court below in the said order are legally unsustainable and should not be relied on.

17. With the liberty to the petitioner to move under Section 110-A of the Customs Act, before the Adjudicating Authority, this Court is disposing of this Crl.M.C. with the following direction:

Considering the delay so far occurred in the matter, the Adjudicating Authority shall dispose of the application, that may be filed by the petitioner under Section 110-A of the Customs Act, expeditiously.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy] P.S. to Judge