

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

CrI.MC.No. 6272 of 2015 ()

**CRL.MP.NO.136/2015 IN SC.NO.646/2013 OF ASSISTANT SESSIONS COURT,
KOTTARAKKARA
CP.NO. 58/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I,KOTTARAKKARA
CRIME NO. 1097/2012 OF KOTTARAKKARA POLICE STATION , KOLLAM DISTRICT**

PETITIONER/CLAIM PETITIONER:

**P.T. GOPI, AGED 43 YEARS,
S/O.THANKAMANI ACHARI, PARAMBAKKATTIL HOUSE,
PALLARIMANGALAM KARA, POTHANIKADU VILLAGE,
KOTHAMANGALAM.**

BY ADV. SRI.K.S.RAJEEV (ALUVA)

RESPONDENT/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRL.MC.NO.6272/2015

APPENDIX

PETITIONER'S ANNEXURES:

- | | |
|----------------|---|
| ANNEX A | COPY OF THE ORDER IN CRIMINAL MC.NO.5053/14 OF HIGH COURT OF KERALA |
| ANNEX B | COPY OF THE CLAIM PETITION FOR INTERIM CUSTODY OF GOLD CHAIN |
| ANNEX C | CERTIFIED COPY OF ORDER IN CRIMINAL MC.NO.136/15 OF ASSISTANCE SESSIONS COURT, KOTTARAKARA. |
| ANNEX D | COPY OF THE APPLICATION SUBMITTED BEFORE THE ASSISTANCE SESSIONS COURT, KOTTARAKARA THROUGH JAIL SUPERINTENDENT. |
| ANNEX E | COPY OF THE PROPERTY REGISTER. |

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.A.TO JUDGE

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[CR]

B. KEMAL PASHA, J.

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Crl.M.C. No.6272 of 2015 E
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Dated this the 12th day of October, 2015

O R D E R

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Petitioner is the 2nd accused in SC No.646/2013 of the Assistant Sessions Court, Kottarakara for the offences punishable under Sections 380 and 413 read with Section 34 IPC.

2. The prosecution case is that the 1st accused gained entry into a room of the Hospital named '*Aroma Medical Centre*' at Chengamanad Muri, Melila Village at 9 a.m. on 05.05.2011 and committed theft of a bag belonged to CW1, which contained a gold chain weighing 2½ sovereigns and gold ear studs weighing ½ sovereign and sold the said gold ornaments to the petitioner. The case against the petitioner is that he purchased the said gold ornaments with the knowledge that the same were stolen

properties and thereafter, he pledged the said gold ornaments at the financial institution of CW5 and obtained an amount of ₹35,500/- as gold loan. According to the investigating officer, the said ornaments were recovered under Section 27 of the Indian Evidence Act.

3. The petitioner contended that the case projected by the prosecution is totally false and during the period in question, the 1st accused was undergoing imprisonment at the Viyyur Central Prison. Records were produced to show that for the period from 16.12.2010 to 02.02.2012, the 1st accused was undergoing imprisonment at the Viyyur Central Prison. The incident had allegedly occurred on 05.05.2011. On that ground, the case against the petitioner was quashed by this Court vide order dated 22.11.2014 in Crl.M.C. No.5053/2014.

4. Thereafter, the petitioner was clamouring for getting back the gold ornaments of his wife from the court below. The court below was not willing to part with the gold.

Subsequently, the 1st accused was discharged by the court below. The petitioner has approached the court below through CrI.M.P.136/2015 for getting back the gold ornaments, which includes the '*Thali*' of his wife, which were pledged by him at the financial institution of CW5. The court below has dismissed the CrI.M.P. through Annexure-C on the ground that there was no trial and, therefore, there is no conclusion of trial and hence, the gold cannot be returned under Section 452 Cr.P.C. Another ground highlighted by the court below is that admittedly the gold ornaments belong to the wife of the petitioner and not to the petitioner and, therefore, he is not the person entitled.

5. It seems that the view taken by the court below are very harsh and too hyper technical to deny the right of the petitioner to get back the gold ornaments. It was the petitioner, who pledged the gold ornaments of his wife, from where that was seized by the police. In such case, it cannot be said that he is the person entitled to the gold ornaments

belong to his wife and it cannot be said that he is not the person entitled.

6. Further, the stage contemplated under Section 452 Cr.P.C. is not with regard to the conclusion of trial alone; whereas it includes the conclusion of inquiry also. As charges have not been framed in the matter, it has to be deemed that trial has not been commenced in the matter. Therefore, the present stage of the case is nothing but the stage of inquiry. Inquiry has been concluded. It is for the court below to pass order under Section 452 Cr.P.C. at that stage.

7. The view taken by the court below in Annexure-C is totally erroneous and, therefore, the same is liable to be set aside. No doubt, the stage of inquiry is concluded now, and as there is no charge against the petitioner or the 1st accused, the court below has to return the gold ornaments to the petitioner. Even though it belongs to the petitioner's wife, it was the petitioner who pledged the gold ornaments

and, therefore, it has to be deemed that the gold ornaments were seized from the custody of the petitioner. Matters being so, the petitioner is the person entitled to possess the said gold ornaments at present.

9. In the result, CrI.M.C. is allowed and Annexure-C stands quashed. CrI.M.P.136/2015 of the court below stands allowed. The court below is directed to return the gold ornaments to the petitioner or to the person who is entitled to possess it, on his executing a bond for ₹50,000/- with two solvent sureties for the like sum each to the satisfaction of the court below. The petitioner shall file an affidavit before the court below, sworn in by his wife to the effect that she has no objection in releasing the gold ornaments to the custody of the petitioner.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/12/10

// True Copy //

PA to Judge