

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

Crl.MC.No. 6294 of 2013 ()

AGAINST THE ORDER IN CC 244/2013 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

CRIME NO. 1813/2013 OF ERNAKULAM CENTRAL POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED:

DOMINIC ALIAS JOLLY, AGED 54 YEARS,
S/O.C.T.FRANCIS, CHERUMUTTATH HOUSE,
ST.AUGUSTINE ROAD
KOCHI-682 018, ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - THROUGH THE SUB INSPECTOR OF POLICE
ERNAKULAM CENTRAL POLICE STATION.

BY PUBLIC PROSECUTOR SRI.K.K. RAJEEV

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
06-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 6294 of 2013 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-1.TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME
NO.1813/2013 OF CENTRAL POLICE STATION, ERNAKULAM.

ANNEXURE-2.TRUE COPY OF THE FINAL REPORT DATED 12/09/2013 IN CRIME
NO.1813/2013 OF CENTRAL POLICE STATION.

ANNEXURE-3.TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE CJMC, ERNAKLAM AS CRL.MP NO.4909/2013 IN CC NO.244/2013.

ANNEXURE-4.TRUE COPY OF THE ORDER DATED 6/11/2013 IN CRL.MP
NO.4909/2013 IN CC NO.244/2013 ON THE FILE OF CJMC, ERNAKULAM.

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

P.S. TO JUDGE

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K. RAMAKRISHNAN, J.

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Crl.M.C.No.6294 of 2013
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Dated this the 6th day of January, 2015.

O R D E R

The petitioner in C.M.P.No.4909/2013 in C.C.No.244/2013 on the file of the Chief Judicial Magistrate Court, Ernakulam is the petitioner herein. He is the accused in the above crime which was registered on the basis of a seizure effected by the Ernakulam Central Police Officials on getting an information that the petitioner was conducting illegal money lending and lending money for exorbitant interest and accordingly they searched his scooter parked in front of a shop and it was found that he was having cash of Rs.1,91,585/-, a Nokia mobile phone and certain blank signed cheques and stamp papers and accordingly they seized the same and registered Crime No.1813/2013 of Ernakulam Central Police station against the petitioner alleging offences under Section 17 of the Kerala Money Lenders Act and Section 4 of Kerala Prohibition of Exorbitant Interest Act. After investigation, final report was filed and it was taken on file as C.C.No.244/2013 on the file of the Chief Judicial Magistrate Court, Ernakulam. The petitioner

filed C.M.P.No.4909/2013 for interim custody of the articles seized and the learned Magistrate by the impugned order released only items 2 and 4, which were received along with other articles in T.No.91/13 as they were his personal belongings, on executing a bond for Rs.One lakh with two solvent sureties and on condition of producing the articles as when required. The prayer for releasing the mobile phone and cash was rejected by the court below. Aggrieved by the same, the petitioner had filed this petition under Section 482 of the Code of Criminal Procedure.

2. Heard the counsel for the petitioner and the learned Public Prosecutor.

3. The counsel for the petitioner submitted that no purpose will be served by keeping the money and there was no complaint that it was intended for money lending as alleged by the prosecution. He is prepared to abide by any condition imposed by this Court.

4. On the other hand, the learned Public Prosecutor

opposed the application on the ground that if it is released, he is likely to misuse the amount.

5. It is an admitted fact that the police has seized the amount and the Nokia mobile phone along with the other articles from the possession of the petitioner. It is also an admitted fact that there is no dispute regarding the fact that money belongs to the petitioner and there is no other claim for the money also. The allegation was that it was being used for illegal money lending so as to get exorbitant interest but it was denied by the petitioner. The Nokia mobile phone is a piece of evidence collected by the investigating agency for proving the transaction and releasing of the mobile phone at this stage will affect the trial of the case. So the court below was perfectly justified in not releasing the mobile phone as interim custody to the petitioner.

6. As regards the cash is concerned, this Court in the decision reported in **Sasikumar v. State of Kerala (2013 (2) KHC 886)**, in a similar case, has held that interim custody

of the amount can be given subject to deposit of sufficient security before the trial court. In that case, this Court has directed the petitioner to furnish bank guarantee. But, in other cases, this Court has observed that security mentioned in the decision need not always be bank guarantee but some other security can be substituted so as to secure realization of the amount later if it has been confiscated. So under the circumstances, this Court feels that cash can be released to the petitioner on executing a bond for Rs.1,91,585/- with two solvent sureties for the like sum each to the satisfaction of the Chief Judicial Magistrate Court, Ernakulam and on further condition that the petitioner furnishing property security for the said amount to the satisfaction of the Chief Judicial Magistrate Court, Ernakulam. For the purpose of ascertaining the value of the property, the court can get report from the Tahsildar or Village Officer regarding the value of the property and after getting the report, the court may direct the petitioner to execute the bond making the property as security for this

amount making a charge on the property and inform the same to the concerned Registrar's office so that the charge created can be entered in the respective registers maintained in the Sub Registrar's office. Further, directing the petitioner to file an affidavit before the court below that he will not alienate or encumber the property during the pendency of the case will also be sufficient to meet the ends of justice. So the order passed by the court below can be modified to the extent as follows:

The court below is directed to release the amount of Rs.1,91,585/- seized from the possession of the petitioner on the following conditions:

i. The petitioner shall execute a bond for Rs.1,91,585/- with two solvent sureties each for the like sum to the satisfaction of the Chief Judicial Magistrate, Ernakulam.

ii. The petitioner shall furnish property security for the above said amount by executing separate bond scheduling the property which he intends to give as security to the

satisfaction of the Chief Judicial Magistrate, Ernakulam creating a charge and on satisfaction, the court shall accept the bond creating charge on the property for the said amount and inform the same to the concerned Registrar's Office so as to enable them to enter the same in the respective registers kept in the Registrar's Office for that purpose .

iii. The petitioner shall file an affidavit before the Chief Judicial Magistrate that he will not alienate or encumber the property till the disposal of the case. After filing the affidavit, he is directed to take certified copy of the same from the concerned court and produce before the concerned Registrar's office within three weeks from the date of filing of such affidavit before the concerned court.

With the above conditions, this Criminal Miscellaneous Case is allowed in part and disposed of. Office is directed to communicate this order to the court below at the earliest.

Sd/-
K. RAMAKRISHNAN, JUDGE.

/true copy/

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P.S to Judge

