

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 3RD DAY OF DECEMBER 2015/12TH AGRAHAYANA, 1937

Cr1.MC.No. 7594 of 2015 ()

PETITIONER(S)/ACCUSED :

JOEMON

S/O. JOSE, CHIRAMEL PADINJARATHALA HOUSE,
KUTTANELLUR, OLLUR P.O., THRISSUR.

BY ADVS.SRI.LINDONS C.DAVIS

SMT.E.U.DHANYA

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR

HIGH COURT OF KERALA, ERNAKULAM-682 031.

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 7594 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A : COPY OF FIR NO.70/2015 OF THRISSUR RAILWAY POLICE
STATION, RAILWAY POLICE.

ANNEXURE B : COPY OF THE VOUCHER ISSUED BY NAKSHATHRA GOLD AND
DIAMONDS, ALUVA.

ANNEXURE C : COPY OF THE NOTICE DTD.14.5.2015 UNDER SECTION 47(2)
OF THE KERALA VALUE ADDED TAX ACT.

ANNEXURE D : COPY OF THE REPRESENTATION DTD.4.6.2015 FILED BY THE
PETITIONER.

RESPONDENT(S) ' EXHIBITS : NIL

//TRUE COPY//

P.A TO JUDGE.

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B.KEMAL PASHA, J.

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Crl.M.C. No. 7594 of 2015

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Dated this the 3rd day of December, 2015

ORDER

What is under challenge is Annexure-A FIR in Crime No.70/2015 of the Railway Police Station, Thrissur, registered under Sections 41(1)(d) and 102 Cr.P.C. As per Section 102(3) Cr.P.C., when any such properties are seized under Section 102(1) Cr.P.C., the seizure has to be forthwith reported before the concerned Magistrate and if the properties, so seized can be produced before the Magistrate, the property has also to be produced before the Magistrate. Here, in this particular case, a sizable quantity of gold was seized from the possession of the petitioner and the same was reported before the Magistrate and the gold was also produced before the learned Magistrate.

2. It seems that the petitioner has filed an application under Section 451 Cr.P.C before the learned

Magistrate seeking the interim custody of the gold. An application under Section 451 Cr.P.C is not maintainable because of the fact that there is no inquiry or trial in the matter before the learned Magistrate. In this particular case, an application under Section 457 Cr.P.C is maintainable when the seizure has been reported before the Magistrate and the property has not been produced 'in any inquiry or trial'. It is true that the property is produced before the Magistrate. When the same has not been produced in the inquiry or trial, the power under Section 457 Cr.P.C comes to play and the learned Magistrate can exercise that power for the disposal of the property under Section 457 Cr.P.C.

With liberty to the petitioner to approach the court below under Section 457 Cr.P.C., this Crl.M.C is disposed of. In case of such an application, the court below shall dispose of the same expeditiously.

Sd/-

B.KEMAL PASHA, JUDGE

Crl.M.C. No. 7594 of 2015

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