

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

Crl.MC.No. 6738 of 2014 ()

CRIME NO. 1288/2014 OF KADAKKAL POLICE STATION , KOLLAM

PETITIONER(S)/ACCUSED:

**SURENDRAN NAIR, AGED 50 YEARS
S/O.BALAKRISHNAN NAIR, SURESH BHAVAN, ETTIN KADAVU
KADAKKAL, KOTTARAKKARA, KOLLAM.**

**BY ADVS.SRI.V.JOHN SEBASTIAN RALPH
SMT.PREETHY KARUNAKARAN
SRI.BIMAL PRASAD
SRI.K.J.JOSEPH (ERNAKULAM)
SRI.V.JOHN THOMAS**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA AT ERNAKULAM- 682 031**

R. BY ADV. PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15-01-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE1: TRUE COPY OF THE CLAIM PETITION C.M.P NO.430/2014

ANNEXURE2: TRUE COPY OF THE ORDER IN C.M.P NO.430/2014.

ANNEXURE 3: TRUE COPY OF THE RECEIPTS SHOWING THE LOAN MUTHOOT CAPITAL SERVICES LTD.

ANNEXURE 4: TRUE COPY OF THE RECEIPTS SHOWING THE LOAN FROM MANAPPURAM FINANCE LTD

ANNEXURE 5: TRUE COPY OF THE RECEIPTS SHOWING THE LOAN FROM CO OPERATIVE AGRICULTURAL RURAL DEVELOPMENT BANK KOTTARAKKARA.

ANNEXURE 6: TRUE COPY OF THE RECEIPT SHOWING THE LOAN FROM KOLLAM DISTRICT CO OPERATAIVE BANK, KADAKKA BRANCH

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PATO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 6738 of 2014

Dated this the 15th day of January, 2015.

O R D E R

The petitioner herein is one of the accused in Crime No.1288/14 of the Kadakkal Police Station, registered under Section 55(a) and (i) of the Kerala Abkari Act, Section 6(e) r/w Section 24 of the Cigarettes and other Tobacco Products (Prohibition of advertisement and regulation of trade and commerce and production, supply and distribution) Act, and also under Section 118(e) of the Kerala Police Act. The properties seized by the police from the possession of the petitioner on search in his business premises include an amount of Rs.33,980/-, huge quantity of tobacco products including cigarettes, and also 750 ml of Indian made foreign liquor, found possessed by him without any bill or authority. It is alleged that he possessed all these items within a short distance from an educational institution, or allegedly within the premises of an educational institution. Pending the proceedings he filed application under Section 451 Cr.P.C before the learned Judicial First Class Magistrate, Kadakkal for interim custody of the articles seized from his possession. The learned Magistrate dismissed the said application (C.M.P 430/2014) on 18.8.2014

on the ground that the properties are liable to confiscation, and that if the properties are now released, it will affect the investigation. The said order is under challenge, and it is sought to be set aside under Section 482 Cr.P.C.

2. On hearing both sides I find that the amount involved in the crime can be released to the petitioner on appropriate conditions, by the learned Magistrate. The tobacco products seized by the police in this case are liable to confiscation under Section 14 of the COTPA, and if there is dispute regarding the process of confiscation, its legality and propriety will have to be adjudged by the appropriate court (Principal Civil Court of Original Jurisdiction), as provided under Section 17 of the COTPA. So the tobacco products cannot be now released to the petitioner. However the Investigating Officer can move the appropriate court for appropriate orders as regards the tobacco products. There is also no question of releasing liquor. However the amount involved in the crime can be released to the petitioner, because he has some explanation of his own as to how the said amount came in his hands. Anyway, decision will have to be taken during trial regarding the said amount also, but at this stage it can be released on appropriate conditions. Release of the amount will not, by itself, in any manner, affect the investigation.

In the result, this petition is allowed in part. The impugned order, to the extent to which it relates to the amount involved in the crime is hereby set aside, and the court below is hereby directed to pass orders

afresh on the said claim, and release the amount to the petitioner on appropriate conditions.

P.UBAID,
JUDGE

sab