

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

OP(Crl.).No. 4553 of 2013 (Q)

CMP 2933/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - 1, VARKALA
.....

PETITIONER(S):

**MRS.SHEELA RANI,
D/O.LATE SIVARAJAN, RESIDING AT DWARAKA NO.1,
NEAR RAIWLAY STATION, KADAKKAVOOR DESOM.**

BY ADV. SRI.R.ANILKUMAR

RESPONDENT(S):

- 1. SUB INSPECTOR OF POLICE,
VARKALA POLICE STATION, VARKALA P.O., PIN - 695 141,
THIRUVANANTHAPURAM DISTRICT.**
- 2. REVENUE DIVISIONAL OFFICER,
VANCHIYOOR, THIRUVANANTHAPURAM, PIN - 695 001.**
- 3. TAHSILDAR,
CHIRAYINKEEZHU TALUK, ATTINGAL P.O.,
THIRUVANANTHAPURAM - 695 001.**
- 4. STATE OF KERALA,
REPRESENTED HOME SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**

BY SENIOR PUBLIC PROSECUTOR SMT.SAREENA GEORGE P.

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

OP(Crl.).No. 4553 of 2013 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: THE TRUE PHOTOCOPY OF THE RELEVANT PAGE OF CERTIFICATE OF
REGISTRATION OF THE VEHICLE KL 16D 944 REGISTERED ON 1/9/2006.**

**EXHIBIT P2: THE TRUE PHOTOCOPY OF THE ORDER PASSED BY THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-1, VARKALA ON 13TH JUNE, 2012.**

**EXHIBIT P3: THE TRUE PHOTOCOPY OF THE REPORT SUBMITTED BEFORE THE
JFMC-1, VARKALA.**

EXHIBIT P4: THE TRUE PHOTOCOPY OF THE REPORT NO.D 26198 DATED 27/6/2012.

**EXHIBIT P5: THE TRUE PHOTOCOPY OF THE RELEASE ORDER PASSED BY THE
JFMC-1, VARKALA DATED 30/4/2013.**

RESPONDENT(S)' ANNEXURES:

ANNEXURE R1 A: A COPY OF THE MAHAZAR DATED 3.6.2012.

**ANNEXURE R1 B: A COPY OF THE LETTER DTD.27.6.2012 ISSUED BY THE PROJECT
MANAGER OFFICE OF THE NIRMITHI KENDRA,
THIRUVANANTHAPURAM.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

P. UBAID, J.

O.P.(CrI) No.4553 of 2013

Dated this the 11th day of March, 2015

JUDGMENT

The petitioner herein is the registered owner of the vehicle No.KL-16D-944, which was seized by the Varkala Police years back, on the allegation that the said vehicle was used for the illicit transportation of river sand. Seizure of the vehicle was not reported to any authority by the police. The Sub Inspector unauthorisedly kept the vehicle in the police station premises. The petitioner made an application before the learned Judicial First Class Magistrate-I, Varkala for interim custody of the vehicle under Section 451 Cr.P.C. The learned Magistrate granted interim custody of the vehicle to the petitioner, on certain conditions. One of the conditions is that the petitioner shall deposit 30% of the value of the vehicle, and the other is that he shall produce bank guarantee or property security for the balance amount to be assessed by the Motor Vehicle Inspector. The petitioner is aggrieved by those conditions, and his grievance is that even the seizure made by the police is illegal. He practically seeks a direction to release the property to him unconditionally. This Court directed the police to submit report stating the facts of the case. This report does not show that the executive authority has initiated confiscation proceedings, and the report also does not show that there is prosecution against the petitioner.

The act of the Sub Inspector is really illegal. He simply seized the vehicle and kept it in the police station premises unauthorisedly. There is no reason or explanation why the fact of seizure was not reported to the court, or to the executive authority. However, on the finding that exposure of the vehicle to sun and rain will cause damage, the learned Magistrate granted interim custody of the vehicle to the petitioner. Even now the police has not initiated any prosecution against the petitioner. When there is no such proceeding against the driver or owner of the vehicle, the vehicle will have to be unconditionally released to the petitioner. The act of the Sub Inspector deserves comments. However, if the petitioner proceeds against him for having kept it unauthorisedly in the police station premises without reporting the fact of seizure to any authority, and thereby causing loss to the petitioner, the Sub Inspector will be answerable. Any way, in the present circumstances, where there is no sort of proceeding with respect to the vehicle, the petitioner's request will have to be allowed.

In the result, this petition is allowed. The conditions imposed by the court below as per order dated 13.06.2012 in CMP No.2933/2012 will stand set aside, and the vehicle will stand released to the petitioner unconditionally. The security, if any, furnished by him shall be released.

Sd/-

P. UBAID, JUDGE

sd