

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 15TH DAY OF OCTOBER 2015/23RD ASWINA, 1937

OP(Crl.).No. 108 of 2014 (Q)

**CRL.MP 1183/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, NORTH
PARAVUR**
.....

PETITIONER(S):

**M/S. VYPEEN KURIES & FINANCE,
A REGISTERED PARTNERSHIP BUSINESS, PERUMPADANNA,
NORTH PARAVUR - 683 513,
REPRESENTED BY ITS MANAGING PARTNER K.O.VARGHESE,
S/O.K.D.OUSEPH, KUZHUPPILLY HOUSE, KEDAMANGALAM,
NORTH PARUR, 683 513.**

**BY ADVS.SRI.DINESH R.SHENOY
SRI.H.KIRAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.**
- 2. THE CIRCLE INSPECTOR OF POLICE,
VADAKKEKKARA, OFFICE OF C.I OF POLICE, VADAKKEKKARA,
PIN - 683 522.**
- 3. REETHA,
W/O.IGNATIUS, KONATH HOUSE,
GOTHURUTH P.O., PIN - 683 516.**
- 4. SHEEJA,
W/O.SHAJU, VAZHAKKALA HOUSE, GOTHURUTH P.O.,
PIN - 683 516.**
- 5. MARY,
W/O.AUGUSTINE, PAINADATH HOUSE, GOTHURUTH P.O.,
PIN - 683 516.**

**R1 & R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE
R3-R5 BY ADV. SMT.SHERLY THOMAS**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
15-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE PHOTOCOPY OF PARTNERSHIP DEED DATED 7.4.06.
- EXHIBIT P2. TRUE PHOTOCOPY OF LICENSE NO.1504/8/2010-11 ISSUED TO THE PETITIONER FOR CONDUCTING MONEY LENDING BUSINESS.
- EXHIBIT P3. TRUE PHOTOCOPY OF THE NOTICE DATED 8.3.14 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P4. TRUE PHOTOCOPY OF NOTICE DATED 8.3.14 ISSUED FROM THE OFFICE OF THE 2ND RESPONDENT TO THE PETITIONER.
- EXHIBIT P5. TRUE PHOTOCOPY OF THE NOTICE DATED 10.3.14 ISSUED BY 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P6. TRUE PHOTOCOPY OF NOTICE DATED 10.3.14 ISSUED BY 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P7. TRUE PHOTOCOPY OF THE NOTICE DATED 10.3.14 ISSUED BY 2ND RESPONDENT BY THE PETITIONER.
- EXHIBIT P8. TRUE PHOTOCOPY OF FIR 147/2014 DATED 8.2.14.
- EXHIBIT P9. TRUE PHOTOCOPY OF CRL.MP 852 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION, JUDICIAL FIRST CLASS MAGISTRATE COURT, NORTH PARUR DATED 11.4.14.
- EXHIBIT P10. TRUE PHOTOCOPY OF THE CRL.M.P 1183 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION, JUDICIAL FIRST CLASS MAGISTRATE COURT, NORTH PARUR DATED 10.6.14.
- EXHIBIT P11. TRUE PHOTOCOPY OF ORDER DTD.5.6.2014 IN CRL.M.P 1017 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE I, NORTH PARUR.
- EXHIBIT P12. TRUE PHOTOCOPY OF ORDER DTD.5.6.2014 IN CRL.M.P 1018 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE I, NORTH PARUR.
- EXHIBIT P13. TRUE PHOTOCOPY OF ORDER DTD.5.6.2014 IN CRL.M.P 1019 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE I, NORTH PARUR.
- EXHIBIT P14. TRUE PHOTOCOPY OF ORDER DTD.9.6.2014 IN CRL.M.P.NOS. 858 AND 821 OF 2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE I, NORTH PARUR.

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EXHIBIT P15. TRUE PHOTOCOPY OF ORDER DTD.1.7.2014 IN CRL.M.P.NOS. 1259/2014, 1183/2014 AND 1116/2014 IN CRIME 147/2014 VADAKKEKKARA POLICE STATION ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE I, NORTH PARAVUR.

EXHIBIT P16: THE LIST OF PROPERTIES PRODUCED BY THE POLICE NO.T 205/2014 IN CC.NO.147/2014 OF VADAKKEKARA POLICE STATION ON THE FILE OF THE JFCM I, NORTH PARAVUR.

EXHIBIT P17: THE LIST OF PROPERTIES PRODUCED BY THE POLICE NO.T 310/2014 IN CC.NO.147/2014 OF VADAKKEKARA POLICE STATION ON THE FILE OF THE JFCM I, NORTH PARAVUR.

EXHIBIT P18: TRUE PHOTOCOPY OF THE CERTIFIED COPY OF FIR NO.47/2014 OF VADAKKEKARA POLICE STATION ON THE FILE OF THE JFCM I, NORTH PARAVUR.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

B. KEMAL PASHA, J.

.....
O.P.(Crl) No. 108 of 2014
.....

Dated this the 15th day of October, 2015

J U D G M E N T

Exts.P11 to P15 orders passed by the Judicial First Class Magistrate's Court-I, North Paravur, so far as it relates to the order to release the gold ornaments to the interim custody of respondents 3 to 5, are under challenge.

2. The 3rd respondent has filed a complaint before the police alleging that one Gilson and Suma Gilson had approached the 3rd respondent and obtained 12 sovereigns of gold ornaments from the 3rd respondent, along with some amounts, by several occasions from April, 2012 onwards, by agreeing to return the same, with intend to defraud and cheat the 3rd respondent, and thereafter, the same were not returned as agreed. The Vadakkekara Police registered

Crime No.147/2014 for the offences punishable under Sections 406 and 420 IPC read with Section 34 IPC.

3. The Vadakkekara Police, during the course of the investigation, approached M/s Vypeen Kuries and Finance, which is a financial institution of which one K.O. Varghese is the Managing Partner and taken away altogether 915.49 gms. of gold ornaments pledged by various persons including the said Gilson and Suma Gilson. The said gold ornaments were produced before the Judicial First Class Magistrate's Court-I, North Paravur. The petitioner herein as well as respondents 3 to 5 filed petitions before the court below under Section 451 Cr.P.C. As the petition filed under Section 451 Cr.P.C. was not disposed of and was kept pending for long, the petitioner has approached this Court initially for getting the Crl.M.Ps. filed by the petitioner disposed of. When the present OP(Crl) is pending, the court below has disposed of all the said Crl.M.Ps through Exts.P11 to P15 orders. It seems that the court below has

passed orders allowing the claims forwarded by respondents 3 to 5 and ordered the release of the gold ornaments claimed by them, to them. The balance gold ornaments were ordered to be released to the petitioner.

4. It is the admitted case that the petitioner was not in any way involved in the offence. The petitioner has been conducting business of money lending through a validly procured licence, which is still valid.

5. Under Section 451 Cr.P.C. the court can pass an order for the disposal of the property pending inquiry or trial, and in such case, the court has to pass such order as it thinks fit for the proper custody of such property. Therefore, the court has got the duty to exercise due care and caution in deciding as to the person who is entitled to have the 'proper custody' of the property. At that stage, the court need not decide the question with regard to the title of the property or the person entitled to possession. What is contemplated under Section 451 Cr.P.C. is only proper

custody.

6. When gold was seized in connection with the investigation from a banking institution, engaged in banking business through a validly procured licence, such a banking institution from where gold is seized, is the person who is entitled to proper custody. On going through Exts.P11 to P15 orders, this Court is satisfied that the court below has failed to exercise its jurisdiction properly and has passed erroneous orders. Instead of deciding the question with regard to the person who is entitled to proper custody, the court below was carried away in deciding to release the gold to the persons who claimed the gold. The court below has forgotten that it was not the stage at which an order under Section 452 Cr.P.C. could be passed. Matters being so, the exercise of jurisdiction by the court below in the matter, in passing Exts.P11 to 15, so far as it relates to the return of gold ornaments to respondents 3 to 5, is wholly erroneous and therefore, Exts.P11 to P15, so far as it relates to the

order to release the gold ornaments to the interim custody of respondents 3 to 5 are liable to be quashed.

7. In the result, this Original Petition is allowed and Exts.P11 to P15 orders, passed by the Judicial First Class Magistrate's Court-I, North Paravur, so far as it relates to the order to release the gold ornaments to the interim custody of respondents 3 to 5, are hereby quashed. The matter is left open and the court below shall pass appropriate orders, by noting down the observations made by this Court, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge