

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

OP(Crl.).No. 264 of 2014 (Q)

PETITIONER(S):

**ALI AKBAR P.K., AGED 26 YEARS
S/O. HUSSAIN, KARIMBINGAL HOUSE, MONGAM P.O.
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.M.K.CHANDRA MOHANDAS
SRI.M.L.JISHNU**

RESPONDENTS:

**1. ANWAR, S/O. POOVANTHINKAL MUHAMMED
MANGATTAYIL VEEDU
P.O.KUZHIMANNA, KIZHISSERY, ALINCHUVADU
MALAPPURAM - 673 641.**

**2. SUB INSPECTOR OF POLICE
KONDOTTY, MALAPPURAM - 673 638.**

**R1 BY ADV. SRI.R.SUDHISH
R1 BY ADV. SMT.M.MANJU
R2 BY PUBLIC PROSECUTOR SMT. S. HYMA**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 02-03-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- P1 - A COPY OF THE REGISTRATION CERTIFICATE.
- P2 - COPY OF THE STATEMENT SHOWING THE TRANSFER OF AMOUNT IN DOLLAR TO THE COMPANY.
- P3 - COPY OF THE STATEMENT SHOWING THE TRANSFER OF AMOUNT IN DOLLAR TO THE COMPANY.
- P4 - COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER AGAINST THE 1ST RESPONDENT TO THE 2ND RESPONDENT SUB INSPECTOR ON 19.6.13.
- P5 - A COPY OF THE ORDER DT. 11.2.14 IN CRL.M.C NO. 2795/13.
- P6 - A COPY OF THE ORDER DATED 14.05.2014.
- P7 - COPY OF THE ORDER OF STAY DT. 02.6.14.
- P8 - COPY OF THE ORDER OF STAY DT. 02.6.14.
- P9 - COPY COMPLAINT SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT DATED 02.09.2014.
- P10 - A COPY OF THE FIRST INFORMATION REPORT FILED BY KONDOTTY POLICE ALLEGING OFFENCES UNDER SECTION 308 OF THE INDIAN PENAL CODE.
- P11 - A PHOTOGRAPH OF THE SUBJECT MATTER VEHICLE WHEN IT WAS EQUIPPED WITH THE ELECTRONIC ADVERTISING DEVICES.
- P12 - A PHOTOGRAPH OF THE VEHICLE SHOWING THE PRESENT STATE AFTER DISMANTLING THE DEVICES.
- P13 - A PHOTOGRAPH OF THE DEVICE ALONG WITH THE VEHICLE.

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(Crl) No.264 of 2014

Dated this the 2nd day of March, 2015

JUDGMENT

The dispute is concerning a vehicle involved in a crime, regarding which an application came under Section 457 Cr.P.C. before the learned Judicial First Class Magistrate, Malappuram. Claim and rival claim came from this petitioner and the 1st respondent herein. The petitioner's claim filed as CMP No.3940/2013, and the 1st respondent's claim filed as CMP No.4225/2013 were considered together by the learned Magistrate, and the two applications were disposed of by an order dated 14.05.2014. The learned Magistrate allowed the claim made by the petitioner herein in CMP No.3940/2013, and disallowed the claim made by the 1st respondent herein. Against the said order, the 1st respondent preferred revision before the Court of Session as Crl.R.P.No.23 of 2014, and obtained a stay of operation of the impugned order in favour of the petitioner herein. A revision petition brought by the petitioner herein is also pending. Any way, the two revision petitions are now

pending before Court of Session, and the Court of Session has already passed an interim order staying the operation of the impugned order. In this proceeding brought under Article 227 of the Constitution of India, the petitioner seeks orders quashing the interim order passed by the Court of Session in revision. Ext.P7 is the said interim order. I fail to understand why the petitioner has come before this Court under Article 227 of the Constitution of India, when his proper and right remedy must be to approach the Court of Session itself, either to cancel the interim order, or to modify the interim order. When revision is pending before the Court of Session, and the Court of Session has also passed interim orders, subject to final orders this Court cannot intrude into the process and direct the Court of Session to act or pass orders this way or that way. Once the Court of Session has passed an interim order, the said Court will have to pass further orders either confirming the interim order, canceling the interim order, or modifying the interim order. Instead of approaching the Court of Session itself for appropriate orders regarding the interim order of stay, the petitioner unnecessarily

came before this Court under Article 227 of the Constitution of India. I am not inclined to pass any orders in this proceeding, because the petitioner can very well approach the court below itself for appropriate orders.

In the result, this original petition is dismissed, without prejudice to the right of the petitioner to approach the court below itself for appropriate orders as indicated above.

Sd/-

P. UBAID, JUDGE

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