



2024/KER/54533

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 17TH DAY OF JULY 2024 / 26TH ASHADHA, 1946

CRL.APPEAL NO. 1321 OF 2023

AGAINST THE ORDER DATED 21.11.2022 IN CRMC NO.1936 OF

2022 OF THE ADDITIONAL SESSIONS COURT (ADHOC) III,

MANJERI

(CRIME NO.155/2021 OF CBCID, MALAPPURAM)

APPELLANT/PETITIONER:

STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, PIN - 682031.

BY SMT PUSHPALATHA M K., SR. PUBLIC PROSECUTOR

RESPONDENT/RESPONDENT:

NISHAD
AGED 36 YEARS
S/O ABDULLA, KILIYIDUKKIL HOUSE, THOTTAKKARA,
AMARAMBALAM AMSAM, PIN - 679102.

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL
HEARING ON 17.07.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**P.G. AJITHKUMAR, J.****“C.R.”****Crl.Appeal No.1321 of 2023****Dated this the 17th day of July, 2024****JUDGMENT**

The State is the appellant. The appeal is filed under Section 19 of the Banning of Unregulated Deposit Schemes Act (BUDS Act), 2019. Grievance of the appellant is that the designated court dismissed the petition filed under Section 14 of the BUDS Act seeking confirmation of the attachment and permission to sell the car bearing Reg.No.KL-71-H-444, which was provisionally attached by the Competent Authority.

2. Notice was served on the respondent through WhatsApp and also through his brother. The respondent did not choose to appear before this Court. Since there is due service of notice and no delay can be afforded since the matter is concerning permission to sell a motor vehicle, I proceed to dispose of the matter.

3. Heard the learned Public Prosecutor.



4. Crime No.155/CB/MPM/21 was registered as a sequel to Crime No.356/2020 of Pookkottumpadam Police Station. The Deputy Superintendent of Police-II, Crime Branch, Malappuram, is investigating the matter. The offences alleged against the respondent, who is the accused, are punishable under Section 3 read with Sections 4, 5(c), (i), (iii) of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Section 3 read with Sections 21(1), (2) & 5 read with Section 23 of the Banning of Unregulated Deposit Schemes Act, 2019. The allegations are that the petitioner utilising the money garnered by committing offences of conducting unauthorised deposit schemes purchased the car bearing Reg. No.KL-71-H-444. The Competent Authority under the BUDS Act after considering the request of the Investigating Officer and materials concerning crime No.155/CB/MPM/21 ordered provisional attachment of the said vehicle.

5. Following the attachment, the car was produced before the court. The vehicle was entrusted with the



investigating officer for interim custody. The Competent Authority thereafter submitted Crl.M.C.No.1936 of 2022 before the Designated Court, invoking the provisions of Section 14 of the BUDS Act, seeking confirmation of the attachment and permission to sell the vehicle. The Designated Court declined the request. The reasons thereof are stated in Paragraph No.4 of the order, which is extracted below:

“The Public Prosecutor has submitted that the above said vehicle is involved in this case. As per the report it can be seen that the vehicle has been kept in safe custody in connection with this crime as per the order of this Court and the investigation is in progress. It is reported that the accused purchased this car through account No.600405043201 it was used for cheating others. The Public Prosecutor submitted that the request has been made for attachment of the vehicle and the car is provisionally attached. The apprehension of the accused/respondent is that, if the vehicle sale in a public auction it will prejudice the accused. Now the case is framing on charges. The Audi car is a vital material to prove the innocence of the accused that the vehicle is not purchased by him through his account. It may adversely affect the culmination of the trial, vehicle involved in this crime also reveal that the owner of the vehicle connected this crime. In this case trial is



not commenced. So, considering the grounds stated in the petition, I am of the view that, provisional attachment is not concerned and also the vehicle cannot be granted to the petitioner for public auction. Hence, the petition is dismissed.”

6. The Apex Court in **Sunder Bhai Ambalal Desai and others v. State of Gujarat [(2002) 10 SCC 283]** issued directions in regard to the custody and disposal of motor vehicles seized by the police during investigation or otherwise. It was held,-

“7. In our view, the powers under Section 451, Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely: -

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”



7. The Apex Court practically depreciated the practice of keeping seized vehicles for long only for the purpose of trial in the case concerned. Guidelines were issued as to how evidence could be preserved for the purpose of trial. It is by preparing a proper panchnama or inventory before handing over possession of the vehicle, which can be used in evidence instead of its production before the Court during the trial. If necessary, evidence can be recorded describing the nature of the property in detail also. The procedure for releasing the vehicle was also delineated by the Apex Court in paragraph No.12.

“12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after: -

- (1) preparing detailed proper panchnama of such articles;
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.”



8. In **General Insurance Council and Others v. State of Andhra Pradesh and Others [(2010) 6 SCC 768]** the Apex Court reiterated the rule in **Sunder Bhai Ambalal Desai** (supra) and held, how the claims of the insurer to get custody of the seized vehicles to be decided. Paragraph No.14 reads,

"14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in **Sunder Bhai Ambalal Desai** (supra) considering the mandate of S.451 read with S.457 of the Code, the following further directions with regard to seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.



(C) Insurer would submit an undertaking / guarantee to remit the proceeds from the sale / auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking / guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

(Underline supplied)

9. The Apex Court explained the reason for resorting to such measures. It is apposite to extract the same. It was observed,

"15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road."



10. The learned Additional Sessions Judge disregarded the said directions while ordering to retain the vehicle in police custody pending the trial. Holding that the car is a vital material to prove the innocence of the accused the Designated Court ordered to keep the vehicle till the trial in the case is complete. For that reason itself the order requires interference.

11. The scheme of the BUDS Act is to give priority to realisation of the assets in the custody of the accused, who allegedly has committed the offences under the BUDS Act or predicate offences, and distribute among the victims of the offences. For that the Designated Court need not wait till the trial and conviction of the accused.

12. Section 14 of the BUDS Act insists on filing of an application for confirmation of the attachment and permission to sell the property within a period of 30 days from the date of order of the provisional attachment. That implies that the sale of the attached properties should take place in a time bound manner. The pendency of the investigation, inquiry or



trial shall not be a bar for confirming the attachment or selling the property. The interest of the accused as also the prosecution at the trial is sufficiently safeguarded if the directions of the Apex Court in **Sunder Bhai Ambalal Desai** and **General Insurance Council** (supra) are followed. If an inventory is prepared and photographs are taken, the same is enough for a proper trial. For that purpose alone, confirmation of the attachment and sale of the property or even disbursement of the sale proceeds in terms of the provisions of the BUDS Act need not be postponed. In that view of the matter, the impugned order is liable to be set aside.

13. The materials available on record would show that there are reasonable grounds to find that the respondent acquired the vehicle utilising the proceeds of the offence. Therefore, there is no reason to decline the plea for confirmation of the attachment and to accord permission to sell the car. Accordingly, in the exercise of the powers under Section 15(3) of the BUDS Act, the attachment of car bearing Reg. No.KL-71-H-0444 is made absolute. The Competent



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Authority is granted permission to sell the property in public auction. The Competent Authority shall conduct the sale and utilise the sale proceeds strictly in accordance with law. The designated court shall prepare an inventory and take photographs of the motor vehicle, if the trial is not yet complete, and shall be kept along with the records in the case to use at the trial.

This Criminal Appeal is allowed accordingly.

Sd/-

P.G. AJITHKUMAR, JUDGE

SMF/dkr