

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945
CRL.MC NO. 6818 OF 2023
AGAINST THE ORDER/JUDGMENT CMP 1734/2023 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - II, KALPETTA
CMP 1065/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - I,
KALPETTA

PETITIONER/CLAIM PETITIONER :-

VINAYAKUMAR K.R, AGED 21 YEARS
S/O LATE.CHENNAJAMMA @ CHENJAMMA,
KEBBEPURA VILLAGE HUNDIPURA POST,
GUNDLUPET TALUK CHAMARAJANAGAR DISTRICT
KARNATAKA, PIN - 571111

BY ADVS.
V.VISAL AJAYAN
RAJESH KUMAR R.

RESPONDENT/COMPLAINANT/STATE :-

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SMT. NEEMA T V, SR. PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
25.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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ORDER

This petition is filed challenging the order dated 05.07.2023 in CrI.M.P.No.1734 of 2023 on the file of the Additional Sessions Judge-II, Kalpetta. By the said order, the application filed by the petitioner herein for the release of the Mahindra Pickup Jeep bearing Registration No.K.A-10A-4110 invoking Section 457 of the Cr.P.C was rejected by the learned Sessions Judge.

2. The prosecution allegation is that the accused transported 50 bottles of Old Admiral VSOP brandy in the above vehicle and violated the provisions of the Abkari Act.

3. In her capacity as the registered owner of the vehicle, one Chenjamma approached the learned Magistrate and filed an application seeking interim custody of the vehicle.

4. By order dated 26.10.2021 in C.M.P.No.1065 of 2021, the learned Magistrate allowed the application by following the law laid down in **Nikhil v. Deputy Excise Commissioner, Kannur** (2016 (5) KHC 215). Among other conditions, the owner of the vehicle was ordered to execute a bond by way of cash security for the value of Rs.6,30,000/-. Due to the onerous nature of the

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conditions imposed, Chenchamma did not deposit the amount and get the vehicle released. For the past two years or more, the vehicle is lying exposed to sun and rain.

5. While so, Chenjamma passed away. The petitioner herein is her son, and he is stated to be the person entitled to possession of the car

6. He approached this Court seeking directions, and this Court, by Annexure-A4 order, issued directions to the learned Sessions Judge to consider the application and take a decision. The Learned Sessions Judge, holding that the petitioner has not been able to explain how the vehicle happened to come into the possession of the accused, rejected the application.

7. I have heard the submissions advanced by the learned counsel appearing for the petitioner and the learned public prosecutor.

8. Having considered the facts and circumstances and after going through the order passed by the learned Sessions Judge, I am of the considered view that the court below was not justified in rejecting the application.

9. Section 451 of the Cr.P.C. empowers the criminal court to make orders for interim custody of the property produced before it

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during trial and inquiry. When the property is produced before the criminal court, regard being had to nature of the property so produced, the criminal court has a discretion to make such an order as it thinks fit for the proper custody of such pending conclusion of enquiry or trial. Where the property, which has been the subject matter of an offence, is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases.

10. For releasing the vehicle, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. It would be the function of the Court under Section 451 of the Cr.P.C. to impose any other appropriate condition. (See **Sunderbhai Ambalal Desai V State Of Gujarat** [AIR 2003 SC 638]).

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11. The aspect of possession and the right of possession alone had to be considered by the court below in the ordinary course. Furthermore, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously as it would serve various salutary purposes. The Court below ought to have realized that the owner of the article would not suffer because of its remaining unused or by its misappropriation. The Court or the police would not be required to keep the article in safe custody and further if the possession of article is handed over after preparing a proper mahazar, the same could have been used in evidence instead of its production before the Court during the trial.

12. It appears that the learned Sessions Judge has not adverted to any of the above aspects while rejecting the application. The fact that the learned magistrate had ordered the release was also not taken note of. The vehicle might have deteriorated a great deal and its value would have come down.

13. This petition will stand allowed and the impugned order is set aside. The learned Sessions Judge is directed to release the vehicle in terms of the guidelines issued by the Apex Court in

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Sunderbhai (supra) and after obtaining fresh valuation as per the provisions of Section 53B of the Abkari Act.

This petition is disposed of accordingly.

Sd/-

**RAJA VIJAYARAGHAVAN V,
JUDGE**

SMA

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APPENDIX OF CRL.MC 6818/2023

PETITIONER ANNEXURES :-

- Annexure A1 TRUE COPY OF THE FIR IN CRIME NO. 558/2021 OF VYTHIRI POLICE STATION DATED 6.8.2021
- Annexure A2 A TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE 27.02.2019
- Annexure A3 TRUE COPY OF THE ORDER IN CMP. NO. 1065/2021 DATED 26 /10/2021
- Annexure A4 TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN CRL.MC NO.2840/2023 DATED 6.06.2023
- Annexure A5 TRUE COPY OF THE ORDER IN ORDER OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE-II, KALPATTA WAYANAD IN CMP. 1734/2023 DATED 5/07/2023