

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 23<sup>RD</sup> DAY OF JUNE 2023 / 2ND ASHADHA, 1945

CRL.MC NO. 6653 OF 2022

[AGAINST THE ORDER DATED 20.08.2022 IN CMP NO.1108/2022 OF  
JUDICIAL FIRST CLASS MAGISTRATE, KADAKKAL, KOLLAM DISTRICT  
ARISING FROM CRIME NO.456/2022 OF VALAVUPACHA POLICE  
STATION]

**PETITIONER/COMPLAINANT:**

SHAMIR T.J

AGED 28 YEARS

S/O THAJUDHEEN, AGED 28 YEARS, ASHOKAPURAM 3RD  
CROSS, NANJANGUD, MYSORE, KARNATAKA - 571301, NOW  
RESIDING AT SALMAN MANZIL THALAVARAMB, MANKODE  
VILLAGE, KOTTARAKKARA TALUK, KOLLAM DISTRICT, PIN  
- 691559

BY ADVS.

S.RAJEEV S

V.VINAY (K/355/2009)

M.S.ANEER (K/644/2013)

SARATH K.P. (K/001467/2021)

PRERITH PHILIP JOSEPH (K/000736/2015)

**RESPONDENTS/STATE AND COUNTER PETITIONER/PETITIONER:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 STATION HOUSE OFFICER  
VALAVUPACHA POLICE STATION, CHITHARA, KOLLAM  
DISTRICT -691559, PIN - 691559
- 3 MUHAMMAD ANEES  
S/O MOIDEENKUTTY @ BAPPU AYANIKKADU VEEDU  
MANGADU, NIRAMARUTHUR PO, THIRUR, MALAPURAM PIN-  
676109 [IMPLEADED AS PER ORDER DATED 4.11.2022 IN  
CRL.MA 2/2022 IN CRL.MC 6653/2022]  
  
FOR R1 AND R2 BY SMT.SREEJA V., SR.PP  
FOR R3 BY ADV. SRI.MANAS P HAMEED

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON  
29.05.2023, THE COURT ON 23.06.2023 PASSED THE FOLLOWING:

## **ORDER**

This Crl.M.C. is submitted by the defacto complainant in crime No.456/2022 of Valavupacha Police Station, Kollam District. The aforesaid crime was registered based on the complaint submitted by the petitioner, alleging offences punishable under Sections 406, 420 and 468 of the Indian Penal Code against the accused persons.

2. The challenge in this Crl.M.C. is against the Annexure-6 order passed by the Judicial First Class Magistrate's Court, Kadakkal, in C.M.P. No.1108/2022 in crime No.456/2022. As per the said order, the application submitted by the petitioner under Section 451 of Cr.P.C. to release the vehicle bearing registration No.KA-09-D-8482, seized by the police as part of the investigation of the said crime, was dismissed.

3. The facts which led to the filing of this Crl.M.C. are as follows: The petitioner was the registered owner of a truck bearing registration

No.KA-09-D-8482. Annexure-1 is the registration certificate, and Annexure-2 is the permit issued to the vehicle by the Deputy Commissioner of Transport, Mysore. Later, the petitioner entered into an agreement with the 1<sup>st</sup> accused, permitting the 1<sup>st</sup> accused to operate the said vehicle on paying daily rent to the tune of Rs 2,000/- per day. Annexure-3 is the aforesaid agreement. As the said vehicle is a heavy goods national permit vehicle used for interstate movements of the goods, the petitioner handed over the original of the registration certificate and other documents to the 1<sup>st</sup> accused. However, the 1<sup>st</sup> accused failed to pay the rent as promised. Even though the petitioner attempted to contact the 1<sup>st</sup> accused, it did not materialise. Later, on verification from the official website of the Motor Vehicles Department, it was found that the ownership of the said vehicle was changed to the name of one Mohammed Anish, the

additional 3<sup>rd</sup> respondent herein. On scrutiny, it was revealed that the 1<sup>st</sup> accused created false documents to transfer the registration of the said vehicle from the name of the petitioner to the name of the 3<sup>rd</sup> respondent. The complaint was submitted in such circumstances, and the crime mentioned above was registered based on the same. As part of the investigation, the vehicle referred to above was seized by the Police. The petitioner submitted Annexure-5 application under Section 451 Cr.P.C. in such circumstances. However, the said application was dismissed as per Annexure-6 order, and the said order is under challenge in this Crl.M.C.

4. The 3<sup>rd</sup> respondent has filed a detailed objection. It was contended that since the order passed under Section 451 of Cr.P.C. is revisable under Section 397 Cr.P.C., the inherent powers of this Court under Section 482 Cr.P.C. cannot be invoked, and therefore, this Crl.M.C. is not

maintainable. It is pointed out that the 3<sup>rd</sup> respondent had purchased the said vehicle for Rs.16,00,000/- in cash. Thereafter, by following the statutory procedures under the provisions of the Motor Vehicles Act, 1988 and the rules framed thereunder, the transfer of the registration was affected by submitting necessary documents in this regard, and now the 3<sup>rd</sup> respondent is the registered owner of the said vehicle. Annexure-R3(a) was produced to substantiate the same. Based on R3(a), the 3<sup>rd</sup> respondent was also issued with a permit from the Transport Department of Karnataka, which was produced as Annexure-R3(b). Therefore, it was pointed out that the Annexure-1 registration certificate relied on by the petitioner to establish the ownership lost its significance. The 3<sup>rd</sup> respondent was not a party to the proceedings, which culminated in the Annexure-6 order. The 3<sup>rd</sup> respondent filed C.M.P. No.222/2022 before the Judicial First

Class Magistrate's Court, Kadakkal, for the release of the vehicle, which is pending consideration. It is also the case of the 3<sup>rd</sup> respondent that the matter is now under investigation, and at this stage, interim custody cannot be granted to the petitioner herein.

5. Heard Sri. S. Rajeev, the learned counsel appearing for the petitioner, Smt. Sreeja V., the learned Senior Public Prosecutor for the State and Sri. Manas P. Hameed, the learned counsel appearing for the additional 3<sup>rd</sup> respondent.

6. The learned counsel for the petitioner submits that the decision taken by the learned Magistrate, as evidenced by Annexure-6, is liable to be interfered with. It is pointed out by the learned counsel for the petitioner that, despite the fact that, apart from the petitioner, no one else has come forward to claim possession of the said vehicle, the application submitted by the petitioner was dismissed merely on the ground

that, the vehicle was not recovered from the possession of the petitioner and that the petitioner failed to produce the original registration certificate of the said vehicle to substantiate his claim. According to the learned counsel for the petitioner, the very basis of the registration of the crime itself was that the registration of the vehicle was clandestinely transferred based on the forged records, and therefore, the reasons mentioned by the learned Magistrate for dismissing the application was not at all proper. This is particularly because, considering the nature of the allegations in the crime, it was impossible for the petitioner to obtain the original registration certificate of the vehicle. Similarly, merely because the vehicle was not seized from the possession of the petitioner, the application for interim custody of the said vehicle cannot be denied.

7. The learned counsel for the 3<sup>rd</sup> respondent

opposed the said contentions by reiterating the contentions raised by him in the objection submitted by him

8. I have carefully gone through the materials placed before me and considered the rival contentions raised by all the parties concerned. Since the 3<sup>rd</sup> respondent raised the question of the maintainability of this Crl. M.C., that issue has to be considered first. The main ground for the said contention is that the order passed under Section 451 of Cr.P.C is revisable under Section 397 of the Cr.P.C. According to the 3<sup>rd</sup> respondent, since it is an order where the rights of the parties concerning the custody of the vehicle are decided therein, it cannot be treated as an interlocutory order, and therefore, the bar contemplated under subsection 2 of Section 397 of Cr.P.C. would not be applicable. It is pointed out that, as the revision is maintainable against such an order,



the inherent powers under section 482 of the Cr. P.C cannot be invoked. To substantiate the contention that the revisional powers of the High Court under Section 397 can be exercised, the learned counsel for the petitioner places reliance upon the decision in **Madhu Limaye v. The State of Maharashtra** [(1977) 4 SCC 551], **Arun Shankar Shukla v. State of U.P and Others** [(1999 6 SCC 146] and **Ganesa Moorthy v. State** [2019 KHC 2871]. In support of the contention that, since revision is contemplated against such an order, no petition under Section 482 can be entertained, the learned counsel relies on the decision rendered by the High Court of Andhra Pradesh in **Bayyrapu Suresh Babu v. The State of Andhra Pradesh and others** [MANU/AP/1476/2021].

9. It is true that going by the decision rendered by the Hon'ble Supreme Court in **Madhu Limaye's** case, an order passed by the Court under Section 451 of Cr.P.C. can be challenged by

invoking the revisional powers of the High Court under Section 397 of Cr.P.C. In **Arun Shankar Shukla's case** (supra), the Honourable Supreme Court was considering the order passed under section 482 of the Cr.P.C, in a petition submitted by persons convicted of certain offences. In the said case, the petitioner before the High Court, invoked the jurisdiction under section 482 of the Cr.P.C, instead of filing a statutory appeal. The factual scenario, in this case, is entirely different. In the decision rendered by a learned Single Bench of the High Court of Andhra Pradesh in **Bayyarapu Suresh Babu's case** (supra), it was held that when the revision petition is maintainable, inherent powers of the High Court cannot be invoked for challenging an order under Section 451 of Cr.P.C. After carefully scrutinizing the statutory provisions, I respectfully disagree with the legal proposition made therein, for the reasons

mentioned hereunder. Even though the learned counsel for the 3<sup>rd</sup> respondent relied on the observations made by the Madras High Court in the order passed in Crl.MD No 30/2012 in **K.Basha v. State**, which was extracted in the decision of the Madaras High Court in **Ganesa Moorthy's** case (Supra). As per the observations made therein, when the revisional powers are barred under section 397 of the Cr.P.C, such orders cannot be challenged by invoking the inherent powers. In this case, the challenge against the invocation of inherent powers is not because there is a bar against revisional jurisdiction, but on the other hand, the contention is that, due to the availability of the revisional remedy, inherent powers cannot be invoked. Hence the said observations are also not helpful to the 3<sup>rd</sup> respondent. After considering all the relevant aspects, I am of the view that there cannot be any absolute bar in invoking the jurisdiction of the High Court under Section 482 Cr.P.C. merely

because of the reason that, a remedy of revision is available in a particular case. The powers under Section 482 Cr.P.C. can be invoked when there is an abuse of the process of court or to secure the ends of justice. It is true that the petitioner invoked the remedy under Section 482 Cr.P.C. even though he had the option to move this Court by filing a revision under Section 397 Cr.P.C. However, the fact remains that this Court has admitted the aforesaid petition, which is now being considered finally after hearing the affected party, the 3<sup>rd</sup> respondent herein. The question involved is that of the interim custody of a motor vehicle which is kept in the police station and is exposed to weather conditions. Any further delay in the matter would cause serious prejudice to the parties, including the petitioner and the 3<sup>rd</sup> respondent. Therefore, declining the jurisdiction vested upon this Court under Section 482 Cr.P.C. on the technical ground

that the revisional powers were available for redressing the grievances of the petitioner at this point of time and relegating the parties to avail the revisional jurisdiction of this court would not be in the best interest of justice. As the purpose of the jurisdiction vested upon this Court under Section 482, Cr.P.C. is to secure the ends of justice, I am of the view that the contention put forward by the 3<sup>rd</sup> respondent as to the maintainability of this petition has to be rejected on this ground. This is particularly because dismissing this application on such a technical plea and relegating the petitioner to avail the remedy of revision would only further prolong the proceedings. Besides the same, even if a revision petition is filed, that has to be considered by this Court, and therefore, I do not find any necessity to entertain the said contention in view of the factual situation in this case.

10. When coming to the merits of the case, the specific contention put forward by the learned counsel for the petitioner is that he is the absolute owner of the said vehicle, and the custody thereof was taken from him by committing an offence. The learned counsel relies on the decision rendered by this Court in **Giji v. A.K. Gopinathan Nair** [1995(2)KLT 695] to substantiate his contention. The decision in **Parakashan V. v. K.P.Pankajakshan and Another** [1985 KHC 977] was also relied on.

11. The contention put forward by the 3<sup>rd</sup> respondent is to the effect that, as of now, the registration of the vehicles stands in his name and therefore, the petitioner herein is no longer the registered owner of the said vehicle. According to him, since he is the registered owner of the vehicle, he is the person who can utilise the said vehicle in the best possible manner and therefore, interim custody has to be

given to him.

12. The crucial aspect to be noticed in this regard is that the crime itself was registered based on a complaint submitted by the petitioner on the ground that the vehicle belonging to him was illegally transferred in the name of the 3<sup>rd</sup> respondent by using forged documents. The matter is under investigation, and the seizure of the vehicle was as part of the same. In **Giji's** case cited supra, this Court observed that, even though, normally, vehicles are ordered to be returned to the person in whose name registration certificate stands, as the registered owner of the vehicle would be in a better position in putting the vehicle for best use, that consideration would be subject to the condition that the possession by the claimant should have been lawful and should not have been acquired by the commission of the crime. It was also observed that if the possession is acquired

through the commission of a crime, the holding of the registration certificate loses its significance. I am in complete agreement with the proposition laid down in the aforesaid decision. In this case, the very basis of the registration of the crime is that the vehicle itself was transferred based on forged documents, and the matter is under investigation. Therefore, the fact that the vehicle is registered in the name of the 3rd respondent is not at all relevant as far as the question of interim custody is concerned.

13. The learned counsel for the 3<sup>rd</sup> respondent placed reliance upon several decisions, wherein it was held that the interim custody of the vehicle has to be entrusted to the registered owner of the said vehicle. However, the question of interim custody is to be decided based on the particular factual situation in each case, and no universal principle can be made applicable for



deciding the same. The ultimate aim is to find out the competent person for entrusting the custody of the vehicle so that it can be preserved until the disposal of the case, and such competence may vary from case to case. In the light of the legal proposition in **Giji's** case (supra), I am of the view that it may not be proper to hold that the vehicle has to be given in the custody of the registered owner when the transfer of the vehicle in favour of the said registered owner itself is allegedly based on the commission of a crime. When the very foundation of the allegation in the crime registered is effecting the transfer of the vehicle using false documents, this Court cannot, ignore the said fact and simply allow the custody to be entrusted with the registered owner, mechanically, merely on the ground that the vehicle stands registered in his name. Of course, the 3<sup>rd</sup> respondent has a specific case

that, as the matter is under investigation, no final decision regarding the veracity of the registration can be reached at this stage. It is true that, upon completion of the investigation, if the Police come to the conclusion that no crime as alleged was committed, the custody has to be given to the 3<sup>rd</sup> respondent from whose possession the vehicle was seized. Thus, there is some uncertainty about the outcome of the investigation and also the criminal proceedings based on the same. But merely because of the same, it cannot be concluded that the interim custody should always be entrusted to the registered owner, ignoring the circumstances under which the vehicle happened to be registered with the said person. It is to be noted in this regard that the scope of an application under Section 451 Cr.P.C. is only to determine the person most competent to possess the vehicle as an interim measure until the proceedings are

over. The question of the title is not being decided.

14. When the question of interim custody is considered from that perspective, certain aspects become crucial. In the objection submitted by the 3<sup>rd</sup> respondent, it is claimed that he purchased the said vehicle for an amount of Rs.16 lakhs, which was claimed to be given in cash. First of all, as per the provisions of the Income Tax Act, no person can have a transaction for such an amount in cash. Apart from the mere claim that he purchased the same for consideration given in cash, no other materials, such as a sale agreement or any other documents evidencing the transaction, are produced. Another crucial aspect is that, admittedly, the said vehicle was seized from his possession on 14.07.2022. However, he filed the application for interim custody of the vehicle on 26.11.2022, much after the Annexure-6 order dated 20.08.2022. The notice of this

Crl.M.C. was issued to the 3<sup>rd</sup> respondent by special messenger on 04.11.2022, and the same was served on 07.11.2022. Thus it is evident that, the application under Section 451 Cr.P.C. was submitted by the petitioner even after the receipt of notice of this Crl.M.C. Thus, the factors such as, no documents are forthcoming to establish the purchase of the said vehicle by the 3<sup>rd</sup> respondent, the claim of paying the consideration of the vehicle in cash without any evidence thereof, the lack of response from the 3<sup>rd</sup> respondent even after the seizure of the said vehicle from his possession on 14.07.2022 etc., are matters which are very conspicuous, when considering the sustainability of his contentions. Now it is learned that the application submitted by the 3<sup>rd</sup> respondent before the learned Magistrate is already dismissed.

15. Now, the vehicle is in the custody of the

Police since it was seized on 14.07.2022. Any further delay in the matter would cause serious prejudice to the parties, as the vehicle is lying idle in an open place and exposed to weather conditions. In such circumstances, it is absolutely necessary to preserve the vehicle, and for that purpose, it is to be entrusted with a proper person who can take care of the vehicle until the proceedings are completed.

16. Another aspect to be noticed in this regard is that, in the Annexure-6 order, the prayer sought by the petitioner was dismissed mainly on the ground that the petitioner could not produce the original registration certificate of the said vehicle. As rightly pointed out by the learned counsel for the petitioner, it was an impossible scenario because the very case of the petitioner based on which the crime was registered was that the vehicle was illegally transferred using forged documents. It is also

specifically stated by him that, while handing over the vehicle to the 1<sup>st</sup> respondent, the original registration certificate was also handed over to enable the 1<sup>st</sup> accused to operate the said vehicle. In such circumstances, insisting on the production of the original registration certificate was not at all proper. Similarly, the fact that the vehicle was not recovered from the possession of the petitioner is also not relevant to be taken into consideration in the light of the factual circumstances under which the crime was registered. Therefore, the Annexure-6 order passed by the learned Magistrate is required to be interfered with.

17. Accordingly, this application is allowed, and the Annexure-6 order passed by the Judicial First Class Magistrate's Court, Kadakkal in C.M.P. No.1108/2022 in Crime No.456/2022 of Valavupacha Police Station is hereby set aside. The learned Magistrate is directed to release the

vehicle to the petitioner upon complying with the following conditions.

- (i) The petitioner shall execute a bond for Rs.15,00,000/- (Rupees fifteen lakhs only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.
- (ii) The petitioner shall furnish security for an amount of Rs 15,00,000/- (Rupees fifteen lakhs only) in the form of immovable property by depositing the original title deed thereof.
- (iii) The petitioner shall undertake that the said vehicle shall not be altered, modified or alienated until the proceedings are over.
- (iv) The petitioner shall undertake before the learned Magistrate by filing an affidavit that he shall produce the vehicle before the Court as and when required.
- (v) Before releasing the vehicle, an appropriate mahazar of the said vehicle showing the present condition thereof shall be caused to be prepared by the investigating officer and the

photographs from all angles shall be taken and kept as part of the records.

This Crl.M.C. is disposed of with the above directions. However, it is clarified that, in case the petitioner is not taking possession of the said vehicle after complying with the said conditions within a period of one month from the date of this order, it shall be open for the 3<sup>rd</sup> respondent to submit a fresh application for the interim custody, before the learned Magistrate.

Sd/-  
ZIYAD RAHMAN A.A.  
JUDGE



APPENDIX OF CRL.MC 6653/2022

PETITIONER'S ANNEXURES:

- ANNEXURE 1 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
- ANNEXURE 2 TRUE COPY OF THE PERMIT ISSUED BY THE DEPUTY COMMISSIONER OF TRANSPORT, MYSORE TO THE VEHICLE BEARING REG.NO. KA-09-D-8482
- ANNEXURE 3 TRUE COPY OF THE AGREEMENT EXECUTED BY THE PETITIONER AND THE ACCUSED ON 31.01.2021
- ANNEXURE 4 TRUE COPY OF THE FIR AND F.I.S. IN CRIME NO.456/2022 OF VALAVUPACHA POLICE STATION
- ANNEXURE 5 TRUE COPY OF THE PETITION IN CMP NO 1108/2022 BEFORE THE JFMC, KADAKKAL
- ANNEXURE 6 CERTIFIED COPY OF THE ORDER OF THE JFMC, KADAKKAL IN CMP NO.1108/2022 DATED 20.08.2022

RESPONDENT ANNEXURES

- ANNEXURE R3 (A) TRUE COPY OF REGISTRATION CERTIFICATE DATED 03.03.2022 ISSUED BY THE GOVERNMENT OF KARNATAKA
- ANNEXURE R3 (B) TRUE COPY OF PERMIT DATED 03.03.2022 ISSUED BY THE TRANSPORT DEPARTMENT, KARNATAKA