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Rajan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-03-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Rajan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE3D DAY OF FEBRUARY201414TH MAGHA, 1935 Crl.MC.No. 843 of 2014 ---------- AGAINST THE

ORDER
IN CMP NO.5928/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMANGALAM DATED1209-2013 ... CRIME NO. 503/2013 OF KUNNAMANGALAM POLICE STATION , KOZHIKODE ... PETITIONER(S): ---------- RAJAN, S/O.UNNI, AGED48YEARS, VADAKKEMUTHIRAPARAMBIL HOUSE, MELOOR P.O.,MELOOR VILLAGE, MUKUNDAPURAM TALUK, THRISSUR (OWNER OF LORRY BEARING REGISTRATION NUMBER KL-41-B-3850). BY ADV. SRI.P.M.ZIRAJ RESPONDENT(S): ---------- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM.

2. SUB INSPECTOR OF POLICE, KUNNAMANGALAM POLICE STATION, KOZHIKODE DISTRICT - PIN-673 504. R1 & R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE.P. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON0302-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss Crl.M.C.No.843/2014 APPENDIX PETITIONER'S ANNEXURES: ANNEX.1: COPY OF THE

ORDER
DTD. 12/09/2013 IN CMP NO.5928 OF 2013 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMANGALAM. ANNEX.II: COPY OF THE

ORDER
DTD. 7/10/2013 IN CMP NO.6335 OF 2013 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KUNNAMANGALAM. RESPONDENT'S ANNEXURES: N I L /TRUE COPY/ P.A.TO JUDGE Kss K. RAMAKRISHNAN, J.

- Crl.M.C. No.843 of 2014 - Dated this the 3rd day of February, 2014

ORDER

This is an application filed by the petitioner challenging the order in Crl.M.P. No.5928/2013 on the file of the Judicial First Class Magistrate Court, Kunnamangalam in Crime No.503/2013 of Kunnamangalam police station under Section 482 of the Code of Criminal Procedure, 1973.

2. It is alleged in the petition that the petitioner is the owner of lorry bearing registration No.KL-41-B-3850. The said vehicle has been seized by the 2nd respondent on 28.7.2013 in connection with crime No.503/2013 of Kunnamangalam police station. The petitioner's driver and employees are the accused in the above crime. The offences alleged against the accused are punishable under Section 269 of the Indian Penal Code and Sections 118 (e), 120 (e) and 120 (a) of the Kerala Police Act. After seizure of Crl.M.C. No.843 of 2014 -2- the above vehicle, the same has been produced before the Judicial First Class Magistrate Court, Kunnamangalam. The petitioner moved two applications to

release the vehicle for interim custody under Section 451 of the Code of Criminal Procedure. But the learned magistrate, without considering the facts and circumstances of the above case, dismissed the above petitions by Annexure Nos.I & II orders. So he has no other remedy except to approach this court for getting release of the vehicle. Hence this petition.

3. Heard the counsel for the petitioner and the learned Public Prosecutor.

4. The counsel for the petitioner submitted the vehicle need not be detained in connection with the investigation as the identity of the vehicle is not in dispute. Further keeping the vehicle exposed to sun and rain will only cause damage to the vehicle. So he prayed for granting interim custody of the vehicle and he has also submitted that he is prepared to abide by any condition imposed by this court. Crl.M.C. No.843 of 2014 -3- 5. On the other hand the learned Public Prosecutor submitted that the vehicle is being used for similar purpose by the petitioner even earlier and if it is released to him, he is likely to use the vehicle for the same purpose.

6. It is an admitted fact that the lorry with No.KL-41- B-3850 belonging to the petitioner has been seized by Kunnamangalam police when the septic tank waste and other contaminated things were carried in the vehicle and dumped in the public drainage causing nuisance to the public. The act complained of is dumping the articles in the public drain causing public nuisance and no proceedings has been initiated against the vehicle for that purpose. Further if the vehicle is kept in the police station exposed to sun and rain till the disposal of the case, it will only ruin the vehicle. Further in the decision reported in Sunderbhai Ambalal Desai v. State of Gujarat [AIR 2003 SC638 the Hon'ble Supreme Court has held that in cases where the retention of vehicle is not required as part of the investigation or for identification of the same at the Crl.M.C. No.843 of 2014 -4- time of trial the interim custody of the vehicle can be given to the person who is entitled to get that custody. Further even assuming that the presence of the vehicle is required as mentioned in the above decision, the photographs of the vehicle in different posture can be taken exhibiting the number of the vehicle in the presence of the petitioner, accused and his counsel and after preparing an inventory the vehicle

can be released to the owner of the vehicle by imposing some conditions to keep the vehicle intact till the disposal of the case. So there is no necessity to retain the vehicle till the disposal of the case. The apprehension of the learned Public Prosecutor that if the vehicle is released it is likely to be used for similar purpose can be removed by imposing some stringent conditions. So the application is allowed with the following conditions:

1. The vehicle shall be released to the petitioner on getting a bond for the value of the vehicle as to be assessed by the authorities under the Motor Vehicles Act with two solvent sureties for the like sum each to the satisfaction of Crl.M.C. No.843 of 2014 -5- the Judicial First Class Magistrate, Kunnamangalam.

2. That the investigating officer is directed to take the photographs of the vehicle exhibiting the number of the vehicle in several posture so as to identify the vehicle later during trial in the presence of the accused, their counsel the present petitioner and his counsel and prepare an inventory regarding the description of the vehicle and produce the same before the court along with the photographs taken and that can be treated as evidence regarding the identity of the vehicle at the time of trial.

3. The petitioner shall not use this vehicle for similar purpose or use the same in such a way to cause nuisance to the public as alleged to have been done in this case and even if the vehicle is intended to be taken such waste it can be done only with necessary licence and permit required to be obtained under any law for the time being in force.

4. The petitioner shall not transfer, hypothecate or do anything in the vehicle in such a way as to reduce its value and utility pending disposal of this case. Crl.M.C. No.843 of 2014 -6- 5. The petitioner shall produce the vehicle before the court concerned as and when required by that court till the disposal of this case and he shall file an undertaking to the above effect in the form of an affidavit and also undertaking to abide by all conditions imposed by this court. With the above conditions, the application is allowed. Sd/- K. RAMAKRISHNAN JUDGE shg/

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