

**Musthafa Kooloth Peedikayil Vs. The State of Kerala, represented by The SHO, Payangadi Police Station Through The Public Prosecutor**

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**Court :** Kerala

**Decided On :** Jan-12-2016

**Judge :** B. Kemal Pasha

**Appeal No. :** Crl. MC. No. 2 of 2016

**Appellant :** Musthafa Kooloth Peedikayil

**Respondent :** The State of Kerala, represented by The SHO, Payangadi Police Station Through The Public Prosecutor

**Judgement :**

1. The vehicle bearing Reg.No.KL 59-J 8426 owned by the petitioner was stolen away by some unknown persons during February, 2015. On the complaint of the petitioner to that effect, timely a crime was registered as Crime No.217/2015 of the Taliparamba Police Station. The crime is under investigation. No arrest could be made and the vehicle could not be seized. Subsequently, some unknown persons had made use of the said vehicle by affixing a false registration number, for transporting river sand illegally. The same was seized on 09.06.2015 by the Payangadi Police, and Crime No.527/2015 was registered. The vehicle was produced before the Judicial First Class Magistrate's Court, Payangadi in the said crime. It was revealed that it was the very same vehicle belonging to the petitioner on which theft was committed, has been made use of by the same unknown

persons who are involved in Crime No.527/15, for the illegal transportation of river sand.

2. On coming to know about the incident, the petitioner approached the court below and filed a claim petition claiming the vehicle. In fact, it is not a petition seeking interim custody. At the same time, it was a petition forwarding a claim over the vehicle. It seems that the court below has in a mechanical manner passed Annexure E order thereby imposing severe conditions in the form of condition Nos.1 and 5.

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

4. This is not a case wherein the petitioner has committed an offence or has permitted someone to commit an offence by making use of his vehicle. This is a case wherein the vehicle owned by the petitioner was stolen away from him by some unknown persons. A crime was also timely registered in respect of the said theft. At the same time, the police could not trace out the culprits. Subsequently, the said vehicle was made use by such persons who had taken away the vehicle, to transport river sand illegally. In the course of the said offence, the vehicle was seized by the police. As per Section 23A(2) of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, if no claim is raised regarding the articles seized, or where the court is satisfied that the application to release them is not satisfactory, the same shall be subject to confiscation. In this case, the petitioner, who is the registered owner from whom the vehicle was stolen away, has filed a claim before the court below. In such a case, the court below ought to have entertained it as a claim over the vehicle and not as a mere application under Section 451 Cr.P.C. seeking interim custody of the vehicle. The petitioner has not committed any offence by making use of his vehicle or he has not permitted anybody to commit such an offence by making use of his vehicle. When the vehicle was the subject matter of theft, and it was taken away from the legal custody of the petitioner by somebody, it cannot be treated as a claim forwarded by the petitioner for interim custody under Section 451 Cr.P.C. Condition Nos.1 and 5 imposed by the court below are, no doubt, onerous. Condition No.1 is modified, and the petitioner is directed to execute a bond for

Rs.1,10,000/- with two solvent sureties for the like such each to the satisfaction of the court below. Condition No.5 imposed by the court below through Annexure E order is hereby lifted.

This Crl.M.C. is allowed with the above modifications to Annexure E order of the court below.

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