

**Asif vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1304550](https://sooperkanoon.com/1304550)

**Court :** Kerala

**Decided On :** Mar-26-2024

**Judge :** Honourable Mr. Justice Bechu Kurian Thomas

**Appeal No. :** Crl.MC/851/2024

**Appellant :** ASIF

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS TUESDAY, THE 26TH DAY OF MARCH 2024 / 6TH CHAITHRA, 1946 CRL.MC NO. 497 OF 2024 CRIME NO.867/2023 OF Pangode Police Station, Thiruvananthapuram PETITIONER/PETITIONER: SAJEER AGED 41 YEARS S/O. MUHAMMAD IBRAHIM, RESIDING AT SAJEENA MANZIL, KALLARA, THIRUVANANTHAPURAM, PIN - BY ADVS. ASHIQ MUHAMMAD S. ADHEEP VIJAY DIVYA JOSE RESPONDENT/RESPONDENT: 1 STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 686611 2 ASIF AGED 30 YEARS S/O. SHAJAHAN, RESIDING AT KOCHOKADAYIL VEEDU,

KURUMBAYAM, KALLARA, THIRUVANANTHAPURAM, PIN - 695608  
SRI. NOUSHAD K. A. (PP) THIS CRIMINAL MISC. CASE HAVING  
COME UP FOR ADMISSION ON 26.03.2024, ALONG WITH  
Crl.MC.851/2024, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS  
TUESDAY, THE 26TH DAY OF MARCH 2024 / 6TH CHAITHRA, 1946 CRL.MC  
NO. 851 OF 2024 CRIME NO.867/2023 OF Pangode Police Station,  
Thiruvananthapuram AGAINST THE ORDER/JUDGMENT DATED 05.12.2023 IN  
CMP NO.7952 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST CLASS -  
II,NEDUMANGAD PETITIONER/PETITIONER:

ASIF AGED 27 YEARS S/O SHAJAHAN, KOCHUKADAYIL HOUSE,  
UNNIMUKKU, KURUMPAYAM P.O, KALLARA, NEDUMANGAD TALUK,  
THIRUVANANTHAPURAM, PIN - 695608 BY ADV V.A.VINOD  
RESPONDENT/RESPONDENT:

1 STATE OF KERALA REPRESENTED BY PUBLIC  
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 STATION  
HOUSE OFFICER PANGODE POLICE STATION,  
THIRUVANANTHAPURAM, PIN - 695609 3 SAJEER S/O MUHAMMED  
IBRAHIM, SAJEENA MANZIL, KALLARA, THIRUVANANTHAPURAM,  
PIN - 695608 BY SREEJA V.- PP THIS CRIMINAL MISC. CASE  
HAVING COME UP FOR ADMISSION ON

26.03.2024, ALONG WITH Crl.MC.497/2024 AND CONNECTED CASES, THE  
COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **ORDER**

Dated this the 26th day of March 2024 Petitioners are the rival claimants under  
Section 451 Cr.P.C. in respect of a vehicle bearing registration No.KL-21-V-9006,

a Toyota Urban Cruiser. The vehicle allegedly belongs to Sri. Asif, who claims to be the owner as per the registration certificate.

2. Sri.Sajeer, who is the petitioner in

Crl.M.C.No.497 of 2024 and had filed Crl.M.P.No.8649 of 2023 before Judicial First Class Magistrate Court-II, Nedumangad, alleges that the vehicle was purchased by him from Sri.Asif, pursuant to an agreement dated 24.05.2022. Despite the alleged transfer, the registration still stand in the name of Sri.Asif. Crl.M.P.No.7952 of 2023 was filed by Sri.Asif claiming interim custody of the same vehicle.

3. On 22.07.2023, Sri.Asif is alleged to have taken custody of the vehicle from the brother of

Sri.Sajeer, for which a crime has been registered as crime No.867 of 2023 of Pangode Police Station, Thiruvananthapuram. Pursuant to the crime, the police seized the vehicle from the custody of Sri.Asif. It is in such circumstances, both the petitioners sought interim custody of the vehicle under Section 451 of Cr.P.C.

4. The learned Judicial First Class Magistrate-II, Nedumangad, by the impugned order dated 05.12.2023, dismissed both applications, and thus the vehicle continues to remain in the police custody.

5. Heard Sri.Ashiq Muhammad S., and

Sri.V.A.Vinod, learned counsel for the petitioners in Crl.M.C.Nos.497 and 851 of 2024 respectively and Sri.Noushad K.A. and Adv.Sreeja V., the learned Public Prosecutors.

6. The learned Public Prosecutors submitted that

the investigation has already been completed, and a final report has been filed, alleging offences under Section 341 and 323 r/w Section 34 of IPC, and the case

is pending consideration before the trial court.

7. On an appreciation of the contentions

advanced, this Court notices that, though initially crime No.867 of 2023 was filed alleging offences punishable under Sections 390, 392, 506, 342 and 323 r/w Section 34 of IPC, the police have, after investigation, filed a final report alleging offences punishable under Sections 341 and 323 of IPC. The final report indicates that the offence of robbery was not committed in the case as per the Investigating Officer. The corollary of the said

**conclusion of the Investigating Officer is that, the**

vehicle continues to remain under the ownership of Sri.Asif, who is the registered owner.

8. In a proceeding under Section 451 of Cr.P.C.,

the consideration of the court is regarding who is the person best entitled for custody. Under Section 451, the custody granted is only interim in nature, and is not determinative of any rights of the parties.

9. Since admittedly, Sri.Asif is the registered owner of the vehicle, this Court is of the view that the interim custody ought to be granted to the registered

owner in the circumstances of these cases. Hence Crl.M.P. No.7952 of 2023 before Judicial First Class Magistrate Court-II, Nedumangad is allowed and Crl.M.P.No.8649 of 2023 is dismissed.

10. Therefore, the vehicle bearing registration No.

KL-21-V-9006 shall be handed over on interim custody to the petitioner in Crl.M.P. No.7952 of 2023 before Judicial First Class Magistrate Court-II, Nedumangad, on the following conditions: i. He shall execute a bond for

Rs.1,00,000/- (Rupees One Lakh Only) with two solvent sureties for the like sum to the satisfaction of the learned Magistrate. ii. He shall file an affidavit undertaking not to sell or alienate the vehicle until conclusion of trial. iii. He shall not destroy the value or utility of the vehicle until conclusion of the crime. iv. He shall produce the vehicle as and when directed by the learned Magistrate.

In view of the above, Crl.M.C.No.497 of 2024 is dismissed and Crl.M.C.No.851 of 2024 is allowed. Sd/- BECHU KURIAN THOMAS JUDGE SSK/26/03 APPENDIX OF CRL.MC 497/2024 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE AGREEMENT DATED 24.05.2022 Annexure 2 TRUE COPY OF THE FIR IN PANGODE POLICE STATION CRIME NO. 867/2023 Annexure 3 TRUE COPY OF THE ORDER DATED 05.12.2023 PASSED BY THE LEARNED JUDICIAL FIRST-CLASS MAGISTRATE'S COURT-II, NEDUMANGADU IN CMP NO. 8649/2023

RESPONDENT'S EXHIBITS:NIL SSK //TRUE COPY// PA TO JUDGE APPENDIX OF CRL.MC 851/2024 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE REGISTRATION CERTIFICATE OF TOYOTA URBAN CRUISER CAR BEARING REGISTRATION NO KL 21 V 9006 Annexure A2 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO 867/2023 Annexure A3 TRUE COPY OF THE AGREEMENT DATED 24.05.2022 Annexure A4 TRUE COPY OF THE C.M.P NO 7952/2023 DATED 22.08.2023 FILED BY THE PETITIONER BEFORE JFCM-II, NEDUMANGAD Annexure A5 TRUE COPY OF THE C.M.P NO 8649/2023 DATE 19.09.2023 FILED BY THE RESPONDENT BEFORE JFCM-II, NEDUMANGAD Annexure A6 CERTIFIED COPY OF THE ORDER IN C.M.P NO 7952/2023 DATED 05.12.2023 OF HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, NEDUMANGAD Annexure A7 TRUE COPY OF THE ORDER IN C.M.P NO 8649/2023 DATED 05.12.2023 OF HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT -II, NEDUMANGAD