

Pius Clement vs State of Kerala

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/3313/2024

Appellant : Pius Clement

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946
CRL.MC NO. 3313 OF 2024 CRIME NO.560/2024 OF PALLURUTHY
POLICE STATION, ERNAKULAM AGAINST THE ORDER/JUDGMENT
DATED 26.03.2024 IN CMP NO.715 OF 2024 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, KOCHI
PETITIONER(S)/PETITIONER: PIUS CLEMENT AGED 52 YEARS, S/O
JOSEPH, PANICKAVEETIL HOUSE, PERUMPADAPPU,
PALLURUTHY.P.O, KOCHI, ERNAKULAM DISTRICT, PIN - 682 006 BY
ADVS. T.P.SANTHOSH KUMAR C.H.ABDUL RASAC

RESPONDENT(S)/COMPLAINANT/STATE: STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682 031 BY ADV. SMT. SHEEBA THOMAS, PUBLIC
PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR
ADMISSION ON 23.04.2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.3313 of 2024
----- Dated this the 23rd day of April, 2024

ORDER

This Criminal Miscellaneous Case is filed challenging Annexure-2 order by which an application under Section 451 Cr.P.C. is dismissed.

2. The petitioner is aggrieved by Annexure-2 order, passed by the Judicial First Class Magistrate Court-II, Kochi by which an application under Section 451 of Cr.P.C. is dismissed. According to the petitioner, he is the owner of Goods Carrier (Tanker)

bearing registration No.KL-41-D-7740. The above case is registered against the petitioner alleging offences punishable under Sections 269, 278 of IPC and also under Section 120(e) of the Kerala Police Act. The vehicle was seized in connection with the above

crime and produced before the court. It is alleged that the vehicle is used for dumping sewage waste into the drainage. The petitioner filed an application under Section 451 of Cr.P.C. to release the vehicle, but the learned Magistrate dismissed the application as per Annexure-2 order. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

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

4. The learned Magistrate dismissed the petition filed under Section 451 of the Code mainly for the reason that the allegation against the accused is

very serious and the learned Magistrate also observed that considering the spirit of the order of this Court in W.P.(C). No.7844/2023, the petitioner is not entitled interim custody. I think, there is some force in the above finding of the learned Magistrate.

5. But, the counsel for the petitioner

submitted that the vehicle is the livelihood of the petitioner and he is ready to comply any conditions imposed by this Court. It is also submitted that the vehicle is now parked in an open place and if it is continued to be there, it will be damaged. The Public Prosecutor opposed the petition and supported the

order passed by the learned Magistrate.

6. After hearing both sides, I think, the vehicle can be released after imposing stringent conditions. In *Sunderbhai Ambalal Desai v. State of Gujarat* (AIR 2003 SC 638), the Apex Court held that powers

under Section 451 Cr.P.C. should be exercisedexp

opinion that, the learned Magistrate can be directed to release the vehicle, after imposing the conditions mentioned in *Sunderbhai Ambalal Desais case* (supra). Therefore, this Criminal Miscellaneous Case is disposed of in the following manner:

1. Annexure-2 order is set aside.

2. The Judicial First Class Magistrate Court -

II, Kochi is directed to release the vehicle bearing registration No.KL-41-D-7740, after imposing the conditions mentioned in *Sunderbhai Ambalal Desai v. State of Gujarat* (AIR 2003 SC 638).

3. The petitioner shall not transfer the vehicle without the permission of the Court.

4. The petitioner shall not commit similar

offence in future and if such offence is committed, the Police Authorities are free to approach the lower court and the lower court can pass appropriate orders to repossess the vehicle, even though this

order is passed by this Court.

Sd/- P.V.KUNHIKRISHNAN nvj JUDGE APPENDIX OF CRL.MC 3313/2024
PETITIONER ANNEXURES ANNEXURE 1 A TRUE COPY OF THE RC BOOK
OF THE VEHICLE BEARING NO. KL 41-D-7740 ANNEXURE 2 TRUE COPY OF
THE ORDER IN CMP.NO. 26.03.2024 RESPONDENTS EXHIBITS :NIL //TRUE
COPY// PA TO JUDGE

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