

Anshad 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/3594/2024

Appellant : Anshad

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. 3594 OF 2024 CRIME NO.171/2024 OF
MUVATTUPUZHA POLICE STATION, ERNAKULAM AGAINST THE
ORDER/JUDGMENT DATED 18.03.2024 IN CMP NO.467 OF 2024 OF
JUDICIAL MAGISTRATE OF FIRST CLASS -I MUVATTUPUZHA
PETITIONER(S)/PETITIONER: ANSHAD AGED 29 YEARS, S/O.
UMMER, THEKKUMKATTIL HOUSE, PALLARIMANGALAM ADIVADU,
KOTHAMANGALAM, PIN - 686 671 BY ADVS. SRUTHY N. BHAT
NIKITA J. MENDEZ NANDITHA S. RESPONDENT(S)/RESPONDENT:
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, PIN - 682 031 BY ADV. SMT. S SEETHA,
SR. 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.3594 of 2024
----- Dated this the 23rd day of April, 2024

ORDER

This Criminal Miscellaneous Case is filed challenging Annexure-3 order by which an application under Section 451 Cr.P.C. is dismissed.

2. According to the petitioner, he is the registered owner of Eicher 10.80 bearing registration No.KL-33B-6049, which has been seized by the Muvattupuzha Police in connection with Crime

No.171/2024 of Muvattupuzha Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 268, 269, 277 r/w Section 34 of IPC and also under Section 120(e) of the Kerala Police Act. It is alleged that the vehicle is used to dump waste materials. The petitioner filed an application for interim custody of the vehicle under Section 451 of Cr.P.C., but the same was dismissed as per Annexure-3 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 exercised

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

1. Annexure-3 order is set aside.

2. The Judicial First Class Magistrate Court - I,

Muvattupuzha is directed to release the vehicle bearing registration No.KL-33B-6049, 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 3594/2024
PETITIONER ANNEXURES ANNEXURE1 TRUE COPY OF THE FIR AND FI
STATEMENT IN CRIME NO. 171/2024 OF MUVATTUPUZHA POLICE STATION,
ERNAKULAM DISTRICT ANNEXURE2 TRUE COPY OF THE PETITION UNDER
SECTION 451 CR.P.C PREFERRED BY THE PETITIONER BEFORE THE
COURT OF THE JUDICIAL FIRST-CLASS MAGISTRATE-I, MUVATTUPUZHA
ANNEXURE3 TRUE COPY OF THE ORDER DATED 18-03-2024 IN C.M.P.
NO.467/2024 BEFORE THE COURT OF THE JUDICIAL FIRST-CLASS
MAGISTRATE - I, MUVATTUPUZHA IN CRIME NO.171/2024 OF THE
MUVATTUPUZHA POLICE STATION RESPONDENTS EXHIBITS :NIL //TRUE
COPY// PA TO JUDGE

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