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Aysha vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1349779

Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/2213/2022

Appellant : AYSHA

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944 CRL.MC NO. 2213 OF 2022 AGAINST THE ORDERIN CRL.M.P.NO. 112/2022 OF COURT OF SESSION, ERNAKULAM PETITIONER/PETITIONER/R.C.OWNER :- AYSHA AGED 53 YEARS VARAMBU MURIYIL CHAPPAYIL VEEDU, PARIPPAI KARA, CHENGALAYI VILLAGE, KANNUR DISTRICT., PIN - 670631 BY ADV V.SETHUNATH RESPONDENTS/DE-FACTO COMPLAINANT/STATE :- 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION HOUSE OFFICER ,THRIKKAKKARA POLICE STATION,THRIKKAKKARA.P.O

ERNAKULAM DISTRICT, PIN - 682021 BY SMT.MAYA M.N, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 03rd day of January, 2023 This petition is filed under Section 482 of the Code of

Criminal Procedure, 1973 (for short Cr.P.C.) seeking to quash an order passed by Court of Sessions, Ernakulam Division (for short the court below) in Crl.M.P.No.112/2022 in Crime No.1576/2021 of Thrikkakara Police Station, declining the prayer of the petitioner to grant interim custody of the vehicle in her favour, copy of which order is produced alongwith the petition on hand as Annexure-A7.

2. The petitioner is the registered owner of an Innova

Car bearing Registration No.KL-59-F-2424 which allegedly is involved in Crime No.1576/2021 of Thrikkakara Police Station registered for offences punishable under Sections 22(c), 20(b)(ii) (A), 8C and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the NDPS Act).

3. According to the petitioner, she has no involvement in

the commission of the offences for which the crime stands registered but is only its registered owner. According to her, her son has used the vehicle belonging to her and in the course of its use, was seized by Thrikkakara Police for alleged transportation of MDMA. The vehicle was infact seized from the premises of a hotel wherein the accused was staying and nothing was recovered from it. The seizure of the contraband was from the room wherein the accused was staying. The petitioner has moved an application under Section 451 of the Code of Criminal Procedure, 1973 (for

short Cr.P.C.) before the court below and by Annexure-A7 order

the application was dismissed.

4. In Sainaba V. State of Kerala [2022 (7) KHC 273

(SC)] the Apex Court has held that the special court is empowered to exercise jurisdiction to grant interim release of the vehicle, on imposition of terms and conditions to be determined by it. In the above scenario, the impugned order dismissing the application seeking interim release stating want of jurisdiction to exercise the power is an erroneous one and is only liable to be set aside.

In the result, Crl.M.C is allowed and Annexure-A7

order is set aside. The court below shall reconsider

Crl.M.P.No.112/2022 on its file and pass appropriate orders in tune with the direction of the Apex Court in Sainaba supra, within a period of two weeks from the date of receipt by it of a certified copy of this order.

Sd/- MARY JOSEPH JUDGE SMA APPENDIX PETITIONER ANNEXURES :- Annexure A1 THE CERTIFIED COPY OF THE F.I.R IN CRIME NO. 1576 / 2021 OF THRIKKAKKARA POLICE STATION Annexure A2 THE CERTIFIED COPY OF THE SEARCH LIST PREPARED BY THE 2ND RESPONDENT IN CRIME NO. 1576 / 2021 OF THRIKKAKKARA POLICE STATION Annexure A3 THE CERTIFIED COPY OF THE REMAND APPLICATION PREPARED BY THE 2ND RESPONDENT IN CRIME NO. 1576 / 2021 OF THRIKKAKKARA POLICE STATION Annexure A4 THE TRUE COPY OF THE CUSTODY APPLICATION OF THE ACCUSED NO. 1 & 3 IN CRIME NO. 1576 / 2021 OF THRIKKAKKARA POLICE STATION Annexure A5 THE CERTIFIED COPY OF CUSTODY MEMO OF THE 3RD ACCUSED IN CRIME NO. 1576 / 2021 OF THRIKKAKKARA POLICE STATION Annexure A6 TRUE COPY OF THE R.C PARTICULARS OF THE VEHICLE BEARING REGN NO. KL-59-F- Annexure A7 CERTIFIED COPY OF THE ORDER IN CRL.M.P 112 /2022 ON THE FILE OF THE SESSIONS COURT, ERNAKULAM DATED 18-2-

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