

Sajeev Kumar vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-23-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/6881/2022

Appellant : Sajeev Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 23RD DAY OF FEBRUARY 2023 / 4TH PHALGUNA, 1944 CRL.MC NO. 6881 OF 2022 CRIME NO.686/2022 OF Pothencode Police Station, Thiruvananthapuram AGAINST THE ORDER IN C.M.P. NO.4428/2022 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,ATTINGAL PETITIONER/DEFACTO COMPLAINANT/PETITIONER IN C.M.P.NO.4500/2022: SAJEEV KUMAR AGED 46 YEARS S/O NATARAJA PILLAI, RESIDING AT LIKHITHAM VEEDU, KALINKIN MUKHAM, PEUMALA, PULLAMPARA P.O, VENJARAMOODU, THIRUVANANTHAPURAM, PIN - 695607 BY ADV MINIMOL R. RESPONDENTS/COUNTER PETITIONER &

PETITIONER IN CMP.4428/2022: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031 2 JITHIN CHANDRAN AGED 26
YEARS, S/O BABU CHANDRAN, THOPPIL BS HOUSE,
MULAKKALATHUKAVU, KILIMANOOR,

THIRUVANANTHAPURAM DISTRICT, PIN - 695601 BY ADV
LATHEESH SEBASTIAN OTHER PRESENT: SRI. VIPIN NARAYAN
PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME
UP FOR ADMISSION ON 23.02.2023, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

===== Dated this the
23rd day of February, 2023

ORDER

Petitioner is the registered owner of the vehicle bearing Registration No. KL-01-AV-3588, which is the subject matter of Crime No. 686/2022 of Pothencode Police Station, Thiruvananthapuram. 2 nd respondent filed C.M.P. No.4428/2022 in the said crime, while petitioner filed C.M.P. No.4500/2022, both under Section 451 of Cr.P.C seeking custody of the said vehicle. After considering the claims of both claimants, the learned Magistrate by order dated 28.09.2022, directed the vehicle to be handed over to the 2nd respondent, being the petitioner in C.M.P. No.4428/2022 on conditions imposed therein.

2. Aggrieved by the order, petitioner herein has preferred this petition filed under Section 482 of Cr.P.C.

3. Smt. Minimol.R, the learned counsel for the petitioner

contended that as a registered owner of the vehicle, the learned Magistrate egregiously erred in directing release of the vehicle to the 2nd respondent, who had absolutely no document of title in his possession. It was further argued that

the payment due for the said vehicle has also not been paid to the petitioner and therefore the title of the vehicle remains with him and hence interim custody ought not

to have been given to the 2nd respondent.

4. Sri. Latheesh Sebastian, the learned counsel for the 2nd

respondent on the other hand submitted that the order of the learned Magistrate does not warrant any interference as it is only an interim measure under Section 451 of Cr.P.C subject to final adjudication relating to the rights of the parties.

5. I have heard Sri. Vipin Narayan, the learned Public Prosecutor also.

6. The jurisdiction of the Court under Section 451 Cr.P.C, is only

as an interim measure to grant custody of the property to the person whom the Magistrate finds to be more legitimately entitled to the possession. KL-01-AV-3588 Maruthi Swift Dezire vehicle, which is registered in the name of the petitioner was put up for sale under a scheme called park and sell as per Annexure II agreement. The said agreement also stipulates that Express vehicles have been given the right to park the car under the scheme and also sell the vehicle at any other location of their choice within the State. The agreement also stipulates that a formal agreement shall be entered into, in the event of sale and payment is to be made to the owner. After perusing the said agreement, the learned Magistrate came to the conclusion that the 2nd respondent has already paid the purchase price of the car to the Agency and took possession of the car and also that he appears to be a genuine purchaser for valid consideration and that his possession

seems to be legal. The learned Magistrate also came to the conclusion

that if the agency failed to pay the consideration to the registered owner, the fault is that of the said agency and not that of the petitioner. It is on the above basis, the learned Magistrate came to the

conclusion that the possession of the vehicle ought to be granted to

the person from who it was seized, which is the 2nd respondent.

7. On a perusal of the reasonings stated by the learned Magistrate, I find the same to be tenable and does not call for any

interference. In this context, this Court bears in mind the limited jurisdiction of this Court under Section 482 of Cr.P.C, considering that the arrangement made is only as an interim measure, I find no reason to interfere.

8. Notwithstanding the above, the rights of the parties which

are stated as being considered in a civil dispute shall not be prejudiced by any observation made in this order, and the learned Civil Court Judge as well as the learned Magistrate shall in any proceedings relating to the vehicle No. KL-01-AV-3588 consider the same untrammelled by any observation made in this order.

This Crl.M.C is dismissed. Sd/- BECHU KURIAN THOMAS JUDGE jka/23.02.23.
APPENDIX OF CRL.M.C No.6881/2022 PETITIONERS ANNEXURES Annexure 1
TRUE COPY OF THE FIR IN CRIME. NO. STATION, THIRUVANANTHAPURAM
DISTRICT Annexure II TRUE COPY OF THE SAID LETTER FOR PARK AND
SALE DATED 4/5/2022 Annexure III TRUE COPY OF THE ORDER DATED
28/9/2022

IN CMP NO. 4428/2022 AND CMP NO.4500/2022 ON THE FILE OF THE
JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ATTINGAL

Annexure IV TRUE COPY OF THE RC BOOK OF THE MARUTI SWIFT DEZIRE
CAR BEARING REGISTRATION NO KL 01 AV 3588 IN THE NAME OF THE
PETITIONER Annexure V TRUE COPY OF THE PLAINT PRESENTED BY THE
PETITIONER HEREIN IN O.S.NO.577/2022 OF MUNSIFF'S COURT, ATTINGAL
Annexure VI TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE
PETITIONER IN O.S.NO.355/2022 OF MUNSIFF'S COURT, ATTINGAL Annexure
VII A TRUE COPY OF THE SAID I.A NO.5/2022 IN O.S.NO.355/2022 OF THE

MUNSIFF'S COURT, ATTINGAL RESPONDENT ANNEXURES Annexure R2(a)
TRUE COPY OF THE PLAINT IN O.S NO Annexure R2(b) TRUE COPY OF THE
RECEIPTS SHOWING PAYMENT OF RS 2, 00,000/- FOR PURCHASING THE
CAR BEARING REG. NO KL-01-AV- 3588

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