

Basheer vs State of Kerala

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Court : Kerala

Decided On : Dec-01-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/9662/2023

Appellant : Basheer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA,
1945 CRIME NO.1058/2023 OF VADANAPPALLY POLICE STATION,
THRISSUR. CRMP NO.6154/2023 OF JUDICIAL MAGISTRATE OF
FIRST CLASS, CHAVAKKAD. PETITIONER/ACCUSED: BASHEER,
AGED 59 YEARS, S/O. ABDULRAHIMAN, POKKAKKILLATH HOUSE,
THALIKKULAM, CHAVAKKAD, THRISSUR DISTRICT, PIN-680 521. BY
ADVS.V.V.JOY AGNA PREM RESPONDENTS: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN-682 031. 2 SUB INSPECTOR OF POLICE,
VATANAPPALLY POLICE STATION, THRISSUR DISTRICT, PIN-680

569. SRI. M.P. PRASANTH, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

P.V. KUNHIKRISHNAN, J.

----- Crl. M.C. No.9662 of 2023
----- Dated this the 1st day of
December, 2023

ORDER

This Criminal Miscellaneous Case is filed challenging Annexure 3 order by which an application under Section 451 Cr.P.C. is dismissed. The petitioner is the registered owner of vehicle bearing registration No.KL-46/N-4538. The case is registered alleging offences punishable under Section 269 IPC and under Section 118(e) of the Kerala Police Act. The vehicle was seized alleging that the same is used to dump chicken waste in the public area. The learned Magistrate dismissed the petition. Aggrieved by the same, this Criminal Miscellaneous Case is filed.

2. Heard the counsel for the petitioner and the Public Prosecutor.

3. The learned Magistrate dismissed the petition

filed under Section 451 of the Code mainly for the reason -3- 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.

4. 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.

5. 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 should be exercised expeditiously and judiciously after imposing appropriate conditions. I am of the considered opinion that the Magistrate can be directed -4- 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: i) Annexure 3 order is set aside.

ii) The Judicial First Class Magistrate, Chavakkad is directed to release the vehicle bearing registration No.KL-46/N-4538, after imposing the conditions mentioned in *Sunderbhai Ambalal Desai v. State of Gujarat* (AIR 2003 SC 638). iii) The petitioner shall not transfer the vehicle without the permission of the Court. iv) 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 JUDGE bpr -5- APPENDIX OF CRL.MC 9662/2023
PETITIONER'S ANNEXURES Annexure 1 A TRUE COPY OF THE FIR IN CRIME
STATION REGISTERED AGAINST THE PETITIONER DATED 17-10-2023
Annexure 2 A TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER
AS CRL.M.P.6154 / 2023 DATED 27-10-2023 BEFORE THE JFCM,
CHAVAKKAD Annexure 3 A CERTIFIED COPY OF THE ORDER ISSUED BY
THE JUDICIAL FIRST CLASS MAGISTRATE IN CRL.M.P 6154/2023 DATED 06-
11-2023

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