

State of Kerala vs Arun

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Court : Kerala

Decided On : Apr-28-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/9174/2022

Appellant : State of Kerala

Respondent : ARUN

Judgement :

-:1:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 28TH DAY OF APRIL 2023/ 8TH VAISAKHA, 1945 CRL.MC NO. 1538 OF 2022 CRMP.NO.2747/2021 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, THRISSUR CRIME NO.811/2021 OF THRISSUR TOWN WEST POLICE STATION

PETITIONER/ RESPONDENT/ COMPLAINANT : STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031 BY SRI.VIPIN NARAYAN,

PUBLIC PROSECUTOR BY SMT.REKHA S., PUBLIC PROSECUTOR
RESPONDENT/ PETITIONER/ ACCUSED : SANITH JAN, SADHEER
JAN, S/O SADHEER JAN, PUTHUVEETIL HOUSE, S.N PARK,
POOTHOLE P.O., THRISSUR, PIN - 680 004 BY ADVS.
K.V.GOPINATHAN NAIR ANUMOD B.NAIR(K/1001/2007)
G.CHITRA(K/400/2008) THIS CRIMINAL MISC. CASE HAVING BEEN
FINALLY HEARD ON 13.04.2023, ALONG WITH CrI.MC.9174/2022,
THE COURT ON 28.04.2023 PASSED THE FOLLOWING: -:2:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN
THOMAS FRIDAY, THE 28TH DAY OF APRIL 2023/ 8TH VAISAKHA,
1945 CRL.MC NO. 9174 OF 2022 C.C.NO.204/2022 OF JUDICIAL
MAGISTRATE OF FIRST CLASS - III, THRISSUR

PETITIONER/ RESPONDENT/ COMPLAINANT : 1 STATE OF KERALA,
REP. BY THE SUB INSPECTOR OF POLICE, OLLUR POLICE
STATION, PIN - 682 031 BY SRI.VIPIN NARAYAN, PUBLIC
PROSECUTOR BY SMT.REKHA S., PUBLIC PROSECUTOR
RESPONDENT/ PETITIONER/ ACCUSED : 1 ARUN, S/O
MURALEEDHARAN ACHARY, LAKSHMI NIVAS, CHONANCHIRA,
PERINAD, KOLLAM - 691 601 PROPRIETOR OF SIVARAM
MOTORING ASSISTANCE, KOLLAM - 691 601 BY ADV BINOY
VASUDEVAN THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY
HEARD ON 13.04.2023, ALONG WITH CrI.MC.1538/2022, THE COURT
ON 28.04.2023 PASSED THE FOLLOWING: -:3:- C.R.

BECHU KURIAN THOMAS, J.

----- CrI.M.C.No.1538 of 2022 and CrI.M.C.No.9174
of 2022 ----- Dated this the 28th day of April, 2023

ORDER

What is the nature of security contemplated under Rule 391A of the Kerala Motor Vehicle Rules, 1989, (for short the Rules) for releasing a vehicle involved in an accident if it was not covered by a valid policy of insurance against third party risks at the time of the accident? The above issue arises for determination in these two cases.

2. Rule 391A of the Rules was incorporated into the statute book w.e.f 03-12-2018. The said rule reads as follows:

391A. Prohibition against release of motor vehicle involved in accident. (1) No Court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damage to property, when such vehicle is not covered by the policy of insurance against third party -:4:-

risks taken in the name of owner or when the owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the owner furnishes sufficient security to the satisfaction of the Court to pay compensation that may be awarded in a claim case arising out of such accident.

(2) Where the motor vehicle is not covered by a policy of

insurance against third party risks, or when the owner of the motor vehicle fails to furnish copy of such policy in circumstance mentioned in subrule (1), or the owner fails to furnish sufficient security as provided in subrule (1), the motor vehicle shall be sold off in public auction by the Magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer, and proceeds thereof shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for the purpose of satisfying the compensation that may have been awarded, or may be awarded in a claim case arising out of such accident.

3. The above amendment to the Rules was necessitated due to the directions in the judgment in Usha Devi and Ors. v. Pawan Kumar and Ors. [MANU/SC/1706/2018].

4. When a vehicle involved in an accident is found to be not

covered by a valid policy of insurance against third party risks, on the date of accident, or when the owner fails to furnish copy of such insurance despite demand by the Investigating Officer, the court cannot release the vehicle without the owner furnishing sufficient -:5:- security to its satisfaction to enable release of the vehicle.

5. In the decision in Jai Prakash v. National Insurance

Company Limited and Others [(2010) 2 SCC 607], the Supreme Court had suggested a comprehensive scheme to provide security to the helpless victims of accidents when the vehicle is not covered by an insurance. In paragraph 41 of the said judgment, suggestion was made to insist on security adequate to satisfy the award that may be ultimately passed as a condition precedent for release of the vehicle. For the purpose of effective comprehension, the said paragraph is extracted as below :-

41. Where there is no insurance cover for a vehicle, the owner should be directed to offer security or deposit an amount, adequate to satisfy the award that may be ultimately passed, as a condition precedent for release of the seized vehicle involved in the accident. If such security or cash deposit is not made, within a period of three months, appropriate steps may be taken for disposal of the vehicle and hold the sale proceeds in deposit until the claim case is disposed of. The appropriate Governments may consider incorporation of a rule on the lines of Rule 6 of the Delhi Motor Accident Claims Tribunal Rules, 2008 in this behalf.'

6. Despite the above direction, when State Governments failed to incorporate such a rule Supreme Court in Usha Devi's case (supra) directed the States to ensure that such a rule is introduced without delay. -:6:-

7. Thus, it was pursuant to the aforesaid direction, that State of Kerala amended the Rules and incorporated the provision as extracted above.

8. The purpose of the rule is explicit. When read along with the

judgments of the Supreme Court mentioned above, it is evident that the intention behind introducing Rule 391A of the Rules is to act as a safeguard for those victims of accident cases who will be unable to execute the awards that may be passed in their favour due to absence of a valid insurance cover against third party risks for the offending vehicle.

9. Sri.Vipin Narayan, the learned Public Prosecutor appearing

on behalf of the State of Kerala raised concerns that, of late, the courts have been directing release of vehicles involved in accidents after imposing conditions like executing a bond for the value of the vehicle. According to the learned Public Prosecutor, the bond cannot be regarded as an adequate or sufficient security since it would be difficult and in many cases, even practically impossible to execute such bonds ultimately and the entire process would lead to another long drawn out litigation.

10. Adverting to the facts of the two cases on hand, it is noticed that in Crl.M.C.No.9174/2022, the learned Magistrate had initially directed the offending vehicle to be released on deposit of an -:7:- amount of Rs.4,00,000/- since the vehicle did not possess a valid

insurance policy. However, this Court in Crl.M.C.No.1718/2022 interfered and directed a reconsideration since the valuation of the vehicle was not shown to have been taken. While reconsidering the condition, the learned Magistrate obtained valuation of the vehicle and fixed it as Rs.3,80,000/- but directed only a bond to be executed for the said amount. The State is challenging the imposition of the condition for releasing the vehicle on execution of a bond alone for the amount of security. In Crl.M.C.No.1538/2022 the vehicle which was not found to be covered by a valid insurance policy was directed to be released, on executing a bond for Rs.19,80,000/- with two solvent sureties.

11. The short point that arises for consideration is the nature of security that is required to be furnished under Rule 391A of the Motor Vehicles Rules.

12. The word 'security' in Rule 391A of the Motor Vehicles Rules

is prefixed by the word 'sufficient'. The words employed in the rule indicate that sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of such accident. Therefore, the security must be sufficient to provide a relief to the victim of the accident.

13. When a vehicle covered by a policy of insurance against third :-8:-

party risks is involved in an accident and the award passed becomes final, the victim obtains immediate relief in the form of compensation from the insurance company. When the vehicle is not so covered by an insurance, the victims find it cumbersome to recover the award amount. Therefore, the security required to be provided under Rule 391A of the Rules must be equivalent to the situation where the vehicle was covered with an insurance policy. This entails an opportunity for immediate recovery of the amount awarded.

14. If a bond alone is permitted to be executed as sufficient security under Rule 391A, the victim may have to, after years of

litigation, initiate further litigation to recover the compensation awarded from the security furnished under the Rules. This certainly could not have been the intention of the rule-making body. The security to be furnished must be capable of being executed and recovered immediately and without further litigation.

15. Though in certain other contexts under other statutes,

security to be furnished can be in the form of a bond, such an interpretation cannot be extended to the word 'sufficient security' in Rule 391A of the Rules. The context and the purpose behind the enactment of the provision cannot be ignored as the essence of law lies in its spirit and not in the letter. The rule of interpretation to suppress the mischief and advance the remedy also ought to be

-:9:- adopted for identifying the meaning behind the word 'sufficient security'. The purpose, as mentioned earlier, is to provide a relief to the victims of compensation where the vehicle involved in an accident is not covered by an insurance for third party risks. Thus, unless the security provided under 391A is capable of being executed immediately without a long drawn out litigation, the object of Rule 391A of the Rules will become redundant.

16. In view of the above discussion, it is held that the word

'sufficient security' in Rule 391A of the Rules means a security from which the amount, when awarded, can easily be recovered, that too without any further litigation. Ideally, a cash deposit or a bank guarantee or fixed deposit receipts or other modes of security from which the amount when awarded, can easily be recovered, should be the nature of security to be furnished under Rule 391A. Executing a bond for the amount directed cannot, in the circumstances, be treated as sufficient security.

17. In this context, it is necessary to observe that if the vehicle is released without obtaining a fresh valid insurance policy against third party risks, it would militate against the intention behind the

Rule. Therefore it would be appropriate that Magistrates insist on production of fresh valid insurance policy against third party risks before releasing the vehicle. - :10:-

18. Coming to the facts of the two cases under consideration, it

is noticed that the vehicles involved in the accident in the two cases were not covered by valid insurance policies. Still the vehicles were directed to be released on furnishing bonds. The condition directing release of the vehicle on a bond is irregular and is therefore liable to be interfered with.

19. Hence the condition imposed in the order dated 18.10.2022

in CrI.M.P.No.1824/2021 in C.C.No.204/2022 on the files of the Judicial First Class Magistrates Court-III, Thrissur to the extent it directs release of the vehicle on

execution of a bond for Rs.3,80,000/- shall stand set aside. Similarly, the order dated 02.07.2021 in Crl.M.P.No.2747/21 in Crime No.811/2021 on the files of the Judicial First Class Magistrate's Court-II, Thrissur to the extent it directs release of the vehicle on execution of a bond for Rs.19,80,000/- shall also stand set aside. The respective Magistrates shall pass fresh orders on those petitions regarding release of the vehicles based on the observations made by this Court in this order.

The criminal miscellaneous cases are allowed as above. Sd/- BECHU KURIAN THOMAS, JUDGE RKM -:11:- APPENDIX OF CRL.MC 1538/2022 PETITIONER'S ANNEXURE : Annexure A CERTIFIED COPY OF ORDER DATED 02.07.2021 IN CRL.M.P.NO.2747/2021 IN CRIME NO.811/2021 OF THRISSUR TOWN WEST POLICE STATION PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT-II, THRISSUR -:12:- APPENDIX OF CRL.MC 9174/2022 PETITIONER'S ANNEXURES : Annexure A TRUE COPY OF THE ORDER DATED 11.02.2022 IN CRL .M.P. NO.1824/2021 OF THE JUDICIAL FIRST CLASS MAGISTRATE - 111, THRISSUR Annexure B TRUE COPY OF THE ORDER IN CRL.M.C NO. HONOURABLE COURT Annexure C TRUE COPY OF THE ORDER DATED 18.10.2022 IN CRL .M.P. NO. 1824/2021 IN C.C.NO.204/2022 PASSED BY THE JUDICIAL MAGISTRATE OF FIRST CLASS NO.111, THRISSUR

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