

Innocent vs State of Kerala,Represented by Public Prosecutor

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Court : Kerala

Decided On : Mar-06-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : Crl.MC/9588/2022

Appellant : Innocent

Respondent : State of Kerala,Represented by Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN MONDAY,
THE 6TH DAY OF MARCH 2023 / 15TH PHALGUNA, 1944 CRL.MC
NO. 9588 OF 2022 AGAINST THE ORDER IN CMP 741/2022 OF
JUDICIAL FIRST CLASS MAGISTRATE COURT(TEMPORARY),
SOUTH PARAVUR IN CRIME NO.1525/2020 OF CHATHANNUR
POLICE STATION

PETITIONER/ACCUSED: INNOCENT AGED 59 YEARS S/O
PATHROSE, PUTHUVAL CHARUVILA, PULLICHIRA, KOTTIYAM,
KOLLAM,, PIN - 691020 BY ADV M.R.SASITH RESPONDENT/STATE:
STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, PIN - 682031 BY ADV. RENJITH GEORGE,

SR. PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06.03.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 06th day of March, 2023

The petitioner's car bearing Registration No. KL- 23-K-9269 was seized in connection with Crime No. 1525 of 2020 of Chathannur Police Station. The crime is registered for the offence punishable under Section 20B of the Narcotic Drugs and Psychotropic Substances Act and Section 7 of the Juvenile Justice Act. The allegation is that, on 21.08.2020, at 17.45 hrs, the accused was found in possession of 1.638 kg of Ganja for the purpose of sale. The contraband was concealed in the boot of petitioner's car. The petitioner is not an accused in the crime.

2. According to the petitioner, his friend had

borrowed the car for personal use and had handed over the vehicle to the accused without the petitioner's consent. Pointing out this fact and seeking interim custody of his car, he filed a petition under Section 457 of the Cr.P.C. before the Judicial First Class Magistrate (Temporary) Court, South Paravur. The petition was dismissed as per Annexure-A1 order for the reason that the vehicle was produced before the Drug Disposal Committee, Kollam and the case is now pending as S.C.No.1716 of 2021 on the files of Additional District and Sessions Court-IV, Kollam.

3. This Court in Shanil and Ors. v. State of

Kerala and Ors. (2023/KER/9753) has held that in the light of the Supreme Court decision in Sainaba v. State of Kerala (2022 (7) KHC (SC)) , Shajahan v. Inspector of Excise and Ors. [2019 (5) KHC 401] stands impliedly reversed. It is also held that, applications seeking

interim custody under Section 457 Cr.P.C. are maintainable even if the inventory of the vehicle is forwarded to the Drug Disposal Committee after certification. As such, the reasoning adopted by the learned Magistrate is not sustainable.

4. Following the judgment in Shanil and Ors (supra), the Criminal Miscellaneous Case is disposed of, permitting the petitioner to file an application seeking interim custody under Section 457 of Cr.P.C.

before the jurisdictional court and directing the court to consider the application on merits, de hors the dismissal of his earlier application. Ordered accordingly. Sd/- V.G.ARUN JUDGE NB/6-3 APPENDIX OF CRL.MC 9588/2022 PETITIONERS ANNEXURE: ANNEXURE A1 THE TRUE COPY OF THE ORDER IN CMP NO.741/2022 PASSED BY JUDICIAL FIRST-CLASS MAGISTRATE (TEMPORARY COURT), S. PARAVUR IN CRIME NO. 24.11.2022 RESPONDENTS ANNEXURE: NIL TRUE COPY P.A. TO JUDGE

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