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Eappen Antony Vs. State of Kerala

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Court : Kerala

Decided On : Jul-24-2015

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Eappen Antony

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE24H DAYOF JULY20152ND SRAVANA, 1937 Crl.MC.No. 4390 of 2015 () ---------- C.M.P. NO.6070/2015 IN CC. NO.757/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, THIRUVALLA. CRIME NO. 1311/2015 OF THIRUVALLA POLICE STATION. ..... PETITIONER(S): ---------- EAPPEN ANTONY, S/O. ANTONY, ARAYIL HOUSE, KOTTAMURI P.O., THRIKKODITHANAM, CHANGANASSERY, KOTTAYAM DISTRICT. BY ADV. SRI.P.S.PRADEEP. RESPONDENT/COMPLAINANT: ---------- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. BY PUBLIC PROSECUTOR SRI.GITHESH. R. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2407-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. Crl.MC.No. 4390 of 2015 APPENDIX PETITIONER'S ANNEXURES:- ANNEXURE A1 : COPY OF AFFIDAVIT IN CMP NO.6070/2015 IN CC NO.757/2015 FILED BY THE PETITIONER BEFORE THE

JUDICIAL FIRST CLASS MAGISTRATE COURT, THIRUVALLA. ANNEXURE A2 : COPY OF THE

ORDER
DTD. 30.06.2015 IN CMP NO.6070/2015 PASSED THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THIRUVALLA. RESPONDENT'S EXHIBITS:- NIL. //TRUE COPY// P.S.TO JUDGE rs. ALEXANDER THOMAS, J.

========== Crl.M.C.No. 4390 of 2015 Dated==========2015 this the 24th day of August,

ORDER

The order under challenge is the one at Anx.A-2 rendered by the Judicial First Class Magistrate's Court, Thiruvalla, on 30.6.2015 on Crl.M.P.No.6070/2015 in C.C.No.757/2015 in Crime No.1311/ 2015 of Thiruvalla Police Station, refusing the prayer of the petitioner for interim custody of the vehicle seized in connection with that crime.

2. Heard Sri.P.S.Pradeep, learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent State of Kerala.

3. The petitioner is the registered owner of the seized, viz., pick up van, seized in connection with the aforestated crime registered for offences under Secs. 269, 277 read with Sec.34 of the I.P.C. The petitioner is not an accused in that crime. The gist of the prosecution case is that the accused arrayed in that crime were found secretly dumping the carcass of a calf at a public reservoir at night from the aforestated vehicle. It is stated the investigation has Crl.M.C.4390/15 - :

2. :- now been completed and the charge sheet was submitted in the case and the vehicle is exposed to the extreme monsoon weather lying in front of the Police Station concerned. That the petitioner is running a dairy farm, whose daily activities are hindered due to the prolonged non-availability of the vehicle. That one of the calves in his dairy farm had died and the petitioner had entrusted his workers to bury the carcass of the dead calf safely. That however, without the knowledge and consent of the petitioner, the accused in the crime took the

carcass in the pick up van at night and would have probably done this to get away from the rigorous work of making a big pit so as to bury the carcass of the calf. That the vehicle has been used for the purpose of day to day activities of his dairy farm and that the entire affairs of the farm are in a standstill due to non- availability of the pick up van, etc.

4. The court below has rejected the plea of the petitioner for interim custody of the vehicle mainly by taking the view that the alleged offences are serious threat to public health and having grave social impact and that admittedly the petitioner was in possession of the vehicle, even though he is not an accused. That it has not been explained how the accused happened to use or possessed the Crl.M.C.4390/15 - :

3. :- vehicle at the time of the occurrence and that no reasonable explanation is offered as to the purpose for which the vehicle was used and that in case the vehicle is released at that stage, there is every possibility of using the vehicle for similar offences.

5. On a consideration of the totality of the facts and circumstances of this case as well as on a perusal of the impugned Anx.A-2 order, this Court is of the considered opinion that certain relevant aspect like plausible explanation urged before this Court, has not been properly considered in its proper perspective before the issuance of the impugned order. It is not in dispute that the petitioner is not accused in the crime and there is no case for the prosecution that the petitioner had intentionally or deliberately given the vehicle to the accused in order to dump the carcass of the dead calf in the manner it was actually done by the accused. The version of the petitioner that he had really insisted his workers to bury the carcass and that he had never asked or consented to his workers to use his vehicle for the purpose of dumping it elsewhere and that this was unilaterally done by his workers in order to avoid very their hardous job of digging a pit for burring the dead calf, etc. appears to be reasonably plausible. Otherwise, the investigation Crl.M.C.4390/15 - :

4. :- could have possibly collected materials from the accused so as to implicate the petitioner also in the crime for the alleged act.

6. That apart from the impugned order does not seem to be in consonance with the well established legal principle settled by the Apex Court regarding the grant of interim custody of the articles seized in criminal matters, in terms of the ruling of the Apex Court in the case Sunderbhai Ambalal Desai v. State of Gujarat reported in 2003 (2) KLT1089(SC)=AIR 2003 SC638 7. The apprehension of the court below that the petitioner may misuse the vehicle by repeating such crimes in future can be alleviated by imposing strict condition in that regard.

8. Accordingly, it is ordered in the interest of justice that the impugned Anx.A-2 order is set aside. The value of the vehicle shall be got assessed by the competent officer not below the rank of Assistant Motor Vehicle Inspector of the area in question. Based on such evaluation, the petitioner will execute a bond for such value of the vehicle so assessed and shall also furnish solvent sureties for the like sum each to the satisfaction of the court below concerned. The investigating officer will be at liberty to take necessary photographs or videographs of the vehicle from all necessary angles Crl.M.C.4390/15 - :

5. :- and to prepare mahazar about the details of the vehicle as per the prescribed procedure. The petitioner shall file an affidavit unconditionally undertaking that he will not alienate, transfer or encumber the vehicle in any manner and that he will not dismantle the vehicle, etc., until orders are passed on the issue of the final custody of the vehicle at the time of the conclusion of the trial and that the vehicle shall not get itself involved in such similar or grave offences. Upon the petitioner fulfilling all these conditions, the court below shall ensure that the interim custody of the vehicle shall be forthwith given to the petitioner without any further delay. It is made cleat that such grant of interim custody will be subject to orders to be passed by the competent court on the issue of final custody of the vehicle at the time of the conclusion of the trial. With these observations and directions, the Crl.M.C. stands finally disposed of. Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge

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