

P.M. Chacko Vs. State of Kerala Represented by Public Prosecutor High Court of Kerala, Ernakulam

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Court : Kerala

Decided On : Mar-06-2012

Judge : P.S. Gopinathan

Appeal No. : Crl.MC.No. 471 of 2012

Appellant : P.M. Chacko

Respondent : State of Kerala Represented by Public Prosecutor High Court of Kerala, Ernakulam

Judgement :

1. In this petition under Section 42 of the Code of Criminal Procedure, the petitioner, who is a third party, assails an order dated 28/01/2012 in Crl.M.P.No. 8402/2011 of the Judicial Magistrate of the First Class, Thiruvalla in Crime No.1203/2011 of Thiruvalla Police Station for the offence under Section 5(a) of the Kerala Rationing Order 1996 read with Sections 3 and 7 of Essential Commodities Act 1955.

2. Having heard either side, I find that the vehicle bearing registration No. KL03/A-6498 TATA 407 tempo van was seized by the Investigating Officer alleging that the said vehicle was used for the illegal transport of the wheat supplied for Public distribution System. The petitioner, claiming to be the registered owner, filed the

above petition before the trial court under Section 451 of the Code of Criminal Procedure seeking an order to release the vehicle on interim custody. By the impugned order, the trial court dismissed the petition after arriving at a finding that it has no jurisdiction to entertain the application for disposal of the vehicle involved in the case and as such he is not inclined to allow the petition.

3. The case of the petitioner is that the trial court has got jurisdiction and without applying the correct law, the petition was dismissed. In support of the argument, the learned counsel relied upon the decision reported in *State of Madhya Pradesh and Others V. Rameshwar Rathod* (AIR 1990 SC 1849 = 1990(4) SCC 21).

4. Going by the above decision, I find that the ruling of the Apex Court is on an identical issue. At paragraph 6 it is held as follows:

“We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the Criminal Courts of the Country have the jurisdiction and the ouster of the ordinary criminal Court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the Criminal Court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security.”

5. I find that the ratio of the above decision is squarely applicable to the case on hand. The trial court has not jurisdiction to dispose the vehicle involved in this case. The claim of the petitioner regarding the entitlement to get the vehicle, as registered owner, was not considered by the trial court. I find that the trial court has to decide the matter afresh in the light of the above decision with reference to the documents produced.

In the result, this petition is allowed. While setting aside the order impugned, the petition is remitted back to the trial court for fresh decision, in the light of the

decision of the Apex Court cited above. The trial court shall dispose of the application as expeditiously as possible, at any rate, within two weeks from the date of receipt of a copy of this order, which the petitioner shall produce before the trial court.

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