

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 29TH DAY OF MARCH 2022 / 8TH CHAITHRA, 1944

OP(CRL.) NO. 134 OF 2022

CRIME NO.690/2019 OF ALUVA WEST POLICE STATION (ALANGAD),

Ernakulam

CC 195/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II, ALUVA

PETITIONER/CLAIM PETITIONER:

M/S.FORTUNE INTEGRATED ASSET FINANCE LIMITED
FIRST FLOOR PANATTU SQUARE,
OPPOSITE SML MOTORS,
PUKKATTUPADY ROAD, TOLL JUNCTION,
EDAPPALLY, ERNAKULAM - 682024.,
REPRESENTED BY ITS AUTHORISED SIGNATORY RAJESH S.,
S/O. SUDHAKARAN, AGED 37 YEARS, SIDHARA,
KIZHAKKEPURAM, NORTH PARUR.

BY ADVS.

SABU S.KALLARAMOOLA
LEEJOY MATHEW.V.

RESPONDENTS/STATE & ACCUSED:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
OFFICE OF THE ADVOCATE GENERAL,
HIGH COURT BUILDINGS, ERNAKULAM
- 2 RATHEESH C.K.
S/O.KUNJAPPAN C.K.
CHENGANATTU HOUSE, CHULLY, ERAPPE,
AYYAMPUZHA P.O., ERNAKULAM.
NOW RESIDING AT MUNDAPPILLY HOUSE,
AMBADYMALA, CHOTTANIKKARA - 682305., PIN - 682305

BY ADV

SRI. SUDHEER GOPALAKRISHNAN - PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
29.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This original petition is filed by the petitioner, praying for a direction to the Judicial First Class Magistrate Court – II, Aluva to accept Ext.P2 application submitted by them under section 451 of Cr.P.C to release the said vehicle.

2. The facts which led to the filing of this original petition is as follows: The petitioner is non-banking finance company and as part of its business transactions they have provided a credit facility to the tune of Rs.2,50,000/- for purchasing vehicle bearing No.KL 36 A 5797 to the 2nd respondent herein. Later the 2nd respondent defaulted the repayments and on enquiry the petitioner came to know that the vehicle is seized by the Police in connection with Crime No.690/2019 of Aluva West Police Station which was registered for the offence punishable under Section 379 of Indian Penal Code. The seizure was effected on 06.12.2019 and the same is remaining idle within the premises of the Police Station since then.

3. In such circumstances, the petitioner submitted Ext.P2 application under Section 451 of Cr.P.C. seeking interim custody of the said vehicle. The said petition was returned from the office of the learned Magistrate stating that proper documents were not produced along with the said application to prove the right of the petitioner to claim possession thereof. It is discernible from records that, subsequently the petitioner re-presented the aforesaid application along with a copy of the registration certificate attested by the Motor Vehicle Authorities in respect of the said vehicle but again the application was not accepted into file and the production of the original Registration Certificate is insisted upon. This Crl.M.C. is filed in the above circumstances.

4. It is evident from the records that the petitioner is only the financier of the vehicle in question and the hypothecation which is created in favour of the petitioner is seen endorsed in the Registration Certificate of the said vehicle.

5 Since the petitioner is only a financier he is not expected to have the possession of the original registration certificate of the

said vehicle and therefore insisting for production of original of the registration certificate for the purpose of considering an application under Section 451 of Cr.P.C. would be an impossible task. Even otherwise, the right of the petitioner as a financier can be ascertained from the endorsements as contained in the registration particulars of the vehicle, as the said endorsements are made on the strength of statutory provisions under the Motor Vehicle Act. In such circumstances, the production of original certificate as a precondition for entertaining application under Section 451 of Cr.P.C. which was submitted at the instance of the financier is unwarranted. The learned counsel for the petitioner further submits that, the insurance policy of the said vehicle also stands expired as the vehicle is lying in the custody for the past two years.

6. Considering the facts and circumstances of the case, I am of the view that, a direction can be issued to the Judicial First Class Magistrate Court – II, Aluva for taking Ext.P2 application into the files, without insisting for the original registration certificate of the vehicle in question. A proper authenticated

document which is duly attested by the Motor Vehicle Authorities shall be treated as proper compliance for the purpose of entertaining the same. As far as the certificate of insurance is concerned, the same also cannot be insisted as a precondition for entertaining an application under Section 451 of Cr.P.C. In the result, this Crl.M.C. is allowed with the following directions:

(a) The learned Magistrate shall take into file Ext.P2 application without insisting for original registration certificate and insurance in respect of the vehicle.

(b) However, if the learned Magistrate grants interim custody of the vehicle to the petitioner herein, a condition has to be imposed to obtain a policy of insurance for the vehicle as contemplated under Section 147 of Motor Vehicle Act before the said vehicle is released in his favour. Unless and until duly attested copy of the same is produced before the court, the vehicle shall not be delivered to the petitioner.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

scs

APPENDIX OF OP(CRL.) 134/2022

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF RC PARTICULARS OF
KL-36/A-5797 ISSUED FROM SUB RTO,
ANGAMALY. |
| Exhibit P2 | TRUE COPY OF APPLICATION FILED BEFORE
THE JFCMC-II, ALUVA IN
C.C.NO.195/2020. |
| Exhibit P3 | TRUE COPY OF THE DEFECT DATED 16-01-
2021 ENDORSED ON THE DOCKET OF EXT.P2
APPLICATION BY THE JFCMC-II, ALUVA. |
| Exhibit P4 | TRUE COPY OF THE DEFECT DATED 13-04-
2021 ENDORSED ON THE DOCKET OF EXT.P2
APPLICATION BY THE JFCMC-II, ALUVA. |