



2025:KER:30578

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

TUESDAY, THE 8TH DAY OF APRIL 2025/18TH CHAITHRA, 1947

CRL.MC NO. 3104 OF 2025

CRIME NO.123/2025 OF VITHURA POLICE STATION, THIRUVANANTHAPURAM

AGAINST THE ORDER/JUDGMENT IN CMP NO.1099 OF 2025 OF JUDICIAL

MAGISTRATE OF FIRST CLASS -III (FOREST OFFENCES), NEDUMANGAD

PETITIONER/PETITIONER:

SHEFEEK SHAJAHAN
AGED 29 YEARS, S/O.RASHEEDA SHEFEEK MANZIL,
VALIYAKADA, ELANCHIYAM P.O.
THIRUVANANTHAPURAM DISTRICT,
PIN - 695563

BY ADV S.NIKHIL SANKAR

RESPONDENT/STATE/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM
(REPRESENTING THROUGH STATION HOUSE OFFICER
VITHURA POLICE STATION, THIRUVANANTHAPURAM DISTRICT-
695551), PIN - 682031

SMT. PUSHPALATHA. M.K, SR.PP.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
08.04.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



ORDER

Dated this the 8th day of April, 2025

The petitioner is aggrieved by Annexure 5 order, dismissing his application for interim custody of the Excavator JCB 81 Hitachi Machine [Invoice No:2207200309] [Engine No:4H2188/222058]. The machine was seized in connection with Crime No.123 of 2025 registered at the Vithura Police Station alleging commission of the offence under Section 306(1)(c)(MA) of the Police Standing Order.

2. The crime is registered in relation to an incident, in which the operator of the machine died, when the machine accidentally fell from a height while engaged in the process of removing pieces of rubber wood from a property.

3. Learned Counsel for the petitioner contends that the impugned order is rendered on the wrong premise that the petitioner was seeking release of a vehicle. Therefore, the learned Magistrate found



fault with the petitioner for not producing the registration certificate and other documents to prove ownership of the vehicle, in spite of producing Annexure 2 tax invoice, Annexure 3 sale letter and Annexure 4 policy of insurance. Reliance is placed on the decisions of this Court in ***Sales Tax Inspector v. Ittoop*** [2004 KHC 56] and ***Rajesh v. State of Kerala*** [2020 (5) KHC 414] to point out the distinction between vehicles and machines like hydraulic excavator.

4. Learned Public Prosecutor points out that in Annexure 3 sale letter the expression used is 'vehicle', which is indicative of the fact that seizure is not of a machine, but a vehicle.

5. Annexure 4 policy of insurance is with respect to a JCB81 Hydraulic Excavator and the policy is termed as a Contractors Plant and Machinery Insurance Policy. This Court in ***Rajesh*** (supra) has held that a Bobcat Excavator is not a vehicle and is



therefore not liable to be registered under the Motor Vehicles Act. That decision was rendered by following the well considered judgment of the Division Bench in ***Sales Tax Inspector*** (supra), paragraphs 7, 8 and 9 of which reads as under;

“7. The 1994 Act was enacted to “provide for levy of tax on the entry of goods into the local areas for consumption, use or sale therein.” S.2 gives the definitions. Cl.(j) defines the motor vehicle to mean a vehicle “as defined under Cl.28 of S.2 of the Motor Vehicles Act, 1988.” S.3 provides for the levy of tax. It lays down that “tax shall be levied and collected” on “the entry of any goods into any local area for consumption, use or sale therein. The tax shall be at such rate or rates as may be fixed by the Government by notification on the purchase value of the goods, but not exceeding the rates specified for the goods in the first schedule in the KGST Act.” The remaining provision is not relevant for the purpose of the present case. After the initial enactment, various other items were also entered. Entry 21 was also



added. It provides for the levy of tax on “other machinery.” Since S.2(j) adapts the definition of the Motor Vehicle as given in the 1988 Act, the provision of S.2(28) may also be noticed. It reads thus:

“Motor Vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres”.

8. A perusal of the above provision shows that a ‘motor vehicle’ is mechanically propelled. It is adapted for use ‘upon roads’. The vehicles fixed upon rails or of a special type adapted for use in a factory are excluded. S.39 provides for compulsory registration of the motor vehicles. It precludes a person from driving any motor vehicle “in any public



place or in any other places” unless it is registered in accordance with the provisions of Chapter IV.

9. A perusal of the provisions as contained in S.2(28) and 39 shows that a motor vehicle is one which is used ‘upon roads.’ Not for making the roads. It has to be compulsorily registered. The short issue in the present case is that – Does the Mechanical Pavar imported by the respondent answer the definition of a motor vehicle and is it required to be registered?”

From the description in Annexure 4 and the precedents, it is apparent that the seizure is of a machine and not a vehicle. As such, there cannot be an insistence on production of registration certificate along with the application seeking its release. On the other hand, the learned Magistrate ought to have considered Annexures 2, 3 and 4 for deciding whether interim custody can be granted to the petitioner.

For the aforementioned reasons, the Crl.M.C is allowed and Annexure 5 order is quashed. The learned



Magistrate shall reconsider CMP No.1099 of 2025 based on the observations above and pass orders thereon, within two weeks of production of a copy of this order.

Sd/-

**V.G.ARUN
JUDGE**

ARK



APPENDIX OF CRL.MC 3104/2025

PETITIONER ANNEXURES

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|-------------------|---|
| ANNEXURE 1 | TRUE COPY OF THE F.I.R IN CRIME NO.123/2025
OF VITHURA POLICE STATION |
| ANNEXURE 2 | TRUE COPY OF THE TAX INVOICE OF THE 2022
MODEL EXCAVATOR JCB 81 HITACHI
MACHINE [INVOICE NO:2207200309] [ENGINE NO:4H
2188/222058] DATED 27/10/2022 |
| ANNEXURE 3 | TRUE COPY OF THE SALE LETTER OF THE MACHINE
ENTERED BETWEEN THE PREVIOUS OWNER AND
PETITIONER DATED 25/10/2024 |
| ANNEXURE 4 | TRUE COPY OF THE INSURANCE CERTIFICATE OF THE
MACHINE ISSUED IN THE NAME OF THE PETITIONER |
| ANNEXURE 5 | TRUE COPY OF THE ORDER IN C.M.P .NO:1099/2025
OF JUDICIAL FIRST CLASS MAGISTRATE COURT FOR
THE TRIAL OF FOREST OFFENCES, NEDUMANGAD DATED
27/02/2025 |