

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

Crl.MC.No. 338 of 2015

**AGAINST THE ORDER DATED 28-09-2013 IN CMP 5717/2013 OF JUDICIAL FIRST
CLASS MAGISTRATE'S COURT - I, KASARAGOD**

CRIME NO. 212/2013 OF BADIADKKA POLICE STATION, KASARGOD
.....

PETITIONER(S):

**GIRIJA, AGED 49 YEARS,
W/O.PRADEEP KUMAR, RESIDING AT HOUSE NO.1/160,
HOOHAKUVA KALLU, KAIRANGALA VILLAGE, BALEPUNI POST,
BANTWAL TALUK, D.K.DISTRICT, KARNATAKA STATE.**

**BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI**

RESPONDENT(S)/STATE:

**THE STATE OF KERALA,
THROUGH THE STATION HOUSE OFFICER,
BADIADKA POLICE STATION, KASARAGOD DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT.JASMINE V.H.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 338 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE A1: THE CERTIFIED COPY OF THE ORDER DATED 28.9.2013 IN
C.M.P.NO.5717/2013 ON THE FILE OF THE LEARNED JUDICIAL FIRST
CLASS MAGISTRATE'S COURT-I, KASARAGOD.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. Ramakrishnan, J.

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Crl.M.C.No.338 of 2015

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Dated this, the 19th day of January, 2015.

ORDER

Petitioner in C.M.P.No.5717/13 on the file of the Judicial First Class Magistrate Court-I, Kasaragod has challenged the order passed by the court below on that application regarding the conditions under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is the registered owner of the vehicle No.KA 19C 7707 which was seized by the Sub Inspector of Police, Badiadka Police Station in Crime No.212/2013 of that police station alleging that the vehicle has involved in illegal transport of sand punishable under Section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter called 'the Act'). The petitioner filed C.M.P.No.5717/2013 before the Judicial First Class Magistrate Court-I, Kasaragod allegedly under Section 457 of the Code of Criminal Procedure for interim custody of the vehicle and the learned magistrate allowed the application on certain conditions relying on the Full Bench decision of this court in **Shan Vs. State of Kerala**

[2010 (3) KLT 413], which is being challenged by the petitioner by filing the above petition.

3. Considering the scope of enquiry, this court felt that the petition can be disposed of after hearing the Counsel for the petitioner and the learned Public Prosecutor.

4. The Counsel for the petitioner submitted after the Full Bench decision, the Act has been amended and Section 23A has been incorporated which came into force from 25.11.2012 and this court had considered the scope of that Section in the decision reported in **Aboobacker v. State of Kerala [2014 (3) KLT 26]**. But, those aspects were not considered by the court below while passing the impugned order.

5. The application was opposed by the Public Prosecutor on the ground that no illegality has been committed by the court below.

6. It is an admitted fact that the Mini Lorry No.KA 19C 7707 was seized by Badiadka police in connection with Crime No.212/2013 of Badiadka police station alleging that the vehicle has been used for illegal transport of river sand in violation of the provisions of the above said Act. It is also an

admitted fact that the petitioner has filed an application for interim custody though it ought to have been filed under Section 451 of Code of Criminal Procedure as the vehicle has been produced before that court. So, the application ought to have been considered as one filed under Section 451 of Code of Criminal Procedure and not under Section 457 of Code of Criminal Procedure as the vehicle was in the custody of the court at the time when the application was filed. The learned magistrate had allowed the application relying on the decisions reported in **Shan Vs. State of Kerala [2010 (3) KLT 413]** and **Shihabudheen Vs. State of Kerala [2012 (3) KLT 592]**. Court below had allowed the application with following conditions:

- 1) The petitioner shall deposit 30% of the value of the vehicle assessed by Joint R.T.O as Rs.2,80,000/-
- 2) The petitioner is directed to furnish bank guarantee or immovable property as security for the balance amount of the vehicle.
- 3) Petitioner shall produce the vehicle before the court as and when required.
- 4) The amount deposited and security furnished will follow the final out come of the confiscation proceedings.
- 5) Petitioner shall produce authenticated

photograph of the vehicle and also original documents of the vehicle for verification.

7. It may be mentioned here after the Full Bench decision, the Act has been amended and Section 23A has been incorporated in the Act and by virtue of Sub Section 2 of that Section, power has been given to the magistrate to release the vehicle on certain conditions. The scope of Section 23A of the Act has been considered by this court in the decision reported in **Aboobacker v. State of Kerala [2014 (3) KLT 26]** and observed that it is not necessary that for the balance amount bank guarantee has to be produced, but, some security can be insisted and that security can be even personal bond with two sureties to the satisfaction of the court. This aspect has not been considered by the court below while passing this order. So, considering the value of the vehicle, this court feels that, directing the petitioner to deposit 15% of the value assessed by the Regional Transport Officer (namely., 15% of Rs.2,80,000/-) and directing the petitioner to execute a bond for the balance amount with two solvent sureties will be sufficient and that will meet the ends of justice. So, condition Nos.1 & 2 are set aside and modified as follows:

The petitioner is directed to deposit 15% of Rs.2,80,000/- namely., Rs.42,000/- before the court below and execute a bond for the balance amount of Rs.2,38,000/- with two solvent sureties for the like sum each to the satisfaction of the Judicial First Class Magistrate-I, Kasaragod and further condition that the release shall be subject to the final orders to be passed by the appropriate authority regarding confiscation under this Act. All other conditions imposed by the court below will remain intact.

With the above modification of the conditions alone, the petition is disposed of.

Office is directed to communicate this order to the concerned court immediately.

Sd/-
K.Ramakrishnan, Judge.

Bb

[True copy]

P.A to Judge