

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

Cr1.MC.No. 914 of 2015  
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AGAINST CMP NO.474/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE  
COURT, MATTANNUR

CRIME NO. 1095/2013 OF MATTANNUR POLICE STATION, KANNUR

PETITIONER:  
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MUSTHAFA, AGED 40 YEARS,  
S/O.KUNHAMMED HAJI, M/S.VINOD ROADWAYS,  
NO.83/J,  
G.G.BLOCK, HOOTHALLI, MYSORE - 18.

BY ADV.SRI.C.KHALID  
SRI.PHIJO PRADEESH PHILIP

RESPONDENT/STATE:  
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STATION HOUSE OFFICER,  
MATTANNUR POLICE STATION  
MATTANNUR, THROUGH STATE OF KERALA REPRESENTED  
BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, COCHIN - 682 031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 04-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 914 of 2015  
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APPENDIX

PETITIONER'S ANNEXURES:  
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ANNEXURE NO.1: THE COPY OF THE FIR IN CRIME NO.1095/13 DATED  
2.11.2013 REGISTERED BY MATTANNUR POLICE STATION.

ANNEXURE NO.2: THE COPY OF THE ORDER IN CMP NO.474/14 FILED  
BEFORE JUDICIAL FIRST CLASS MAGISTRATE, MATTANNUR, DATED  
22.3.2014

RESPONDENT'S ANNEXURES:  
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NIL

//TRUE COPY//

P.A TO JUDGE

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**P.UBAID, J.**

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**Crl.M.C No.914 of 2015**  
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Dated this the 4<sup>th</sup> day of March, 2015

**O R D E R**

The petitioner herein is the registered owner of the lorry No.KA.09B-4575 involved in a crime registered under Section 23 r/w 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short 'the Sand Act'). Pending investigation, he made an application before the learned Judicial First Class Magistrate, Mattannur for interim custody of the vehicle. The learned Magistrate granted relief on certain conditions as per the order dated 22.3.2014 in C.M.P No.474/2014. The petitioner is aggrieved by one of the conditions that he shall deposit 30% of the value of the vehicle before the court. Regarding the other conditions, it appears, he has no grievance.

2. On hearing both sides, and on a perusal of the impugned order I find that the objectionable condition requires interference by way of modification. In view of the amendment to the Sand Act incorporating Section 23A, this Court has clarified the position that Judicial Magistrates dealing with

applications under Section 451 of the Code of Criminal Procedure for interim custody of vehicle or other properties involved in such crimes will have discretion in imposing appropriate conditions for releasing properties. It appears that this decision was not brought to the notice of the learned Magistrate. In the particular facts and circumstances, I find that direction to deposit 20% of the value of the vehicle will be appropriate. It is submitted by the learned Public Prosecutor that the petitioner's vehicle is not involved in any other crime under the Sand Act.

In the result, this Criminal Miscellaneous Case is allowed in part. Accordingly, the objectionable condition imposed by the court below as per the impugned order directing deposit of 30% of the value will stand modified to the effect that the petitioner shall deposit 20% of the value assessed by the Assistant Motor Vehicle Inspector.

**P.UBAID  
JUDGE**

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