

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.MC.No. 940 of 2015 ()

**IN CMP 8035/2014 of J.M.F.C.,TALIPARAMBA
CRIME NO. 468/2014 OF PAYYAVOOR POLICE STATION , KANNUR**

PETITIONER(S)/PETITIONER:

**JOBBY AGED 39 YEARS
S/O. JOSEPH, PANNORAYIL HOUSE, KANDAKASSERI
PAYYAVOOR P.O., PAYYAVOOR AMSOM, TALIPARAMBA TALUK
KANNUR DISTRICT.**

**BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI**

RESPONDENT(S)/STATE:

**STATE
REP. BY THE PUBLIC PROSECUTOR
HIGH COURT OF EKRALA AT ERNAKULAM THROUGH S.H.O PAYYAVOOR
POLICE STATION
KANNUR DISTRICT - 670 633.**

R BY ADV. PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09-04-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 940 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

A1 - TRUE COPY OF THE R.C OF KL- 23 B/8917 TIPPER LORRY.

**A2 - TRUE COPY OF THE ORDER IN C.M.P NO. 8035/2014 O J.F.C.M COURT,
TALIPARAMBA DT. 23.1.15.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

PA TO JUDGE
sab

P.UBAID, J.

Crl. M.C No. 940 of 2015

Dated this the 9th day of April, 2015.

O R D E R

The petitioner claims to be the owner of the vehicle No.KL 23B/8917 involved in Crime No.468 of 2014 of the Payyavoor Police Station, registered under Section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001 (Sand Act). The petitioner made an application before the Judicial First Class Magistrate Court, Taliparamba for interim custody of the said vehicle. The learned Magistrate dismissed the application on the ground that confiscation proceedings have been initiated by the Sub Divisional Magistrate, Thalassery. The said order dated 23.1.2015 is under challenge. On hearing both sides I find that the vehicle can be released to the petitioner subject to the result of the confiscation proceedings. After the introduction of section 23 A in the Kerala Sand Act, the proper authority to grant interim custody of vehicle under Section 451 Cr.P.C is the Judicial Magistrate having jurisdiction over the area. Whatever orders passed by the court under Section 451 Cr.P.C will be subject to the confiscation

proceedings initiated by the Executive Authority under Section 23 A(3) Cr.P.C. If there is an order of confiscation under section 23 A (4) of the Sand Act, the vehicle can be dealt with appropriately in spite of orders passed by the judicial authority granting interim custody. In this case it is reported that confiscation proceedings are still going on, and there has not been much progress in the proceedings. If we wait till conclusion of the proceedings, it will cause loss and hardship to the petitioner.

In the result, this petition is allowed. The impugned order passed by the court below will stand set aside, and the C.M.P No.468 of 2014 will stand revived for disposal afresh. The learned Magistrate is hereby directed to grant interim custody of the vehicle to the petitioner, if he is entitled for such custody, on appropriate reasonable conditions, subject to the confiscation proceedings and the result thereof at the hands of the Execution Authority.

Sd/-

P.UBAID,
JUDGE