

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF MARCH 2015/22ND PHALGUNA, 1936

Crl.MC.No. 1632 of 2015 ()

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OP(Crl.) 30/2015 of HIGH COURT OF KERALA
Crl.MP 466/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,MANJERI
CRIME NO. 37/2015 OF EDAVANNA POLICE STATION , MALAPPURAM DISTRICT
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PETITIONER:

**UMMER V.P., AGED 28 YEARS
S/O.ABOOBACKER, VELLARAMPARA HOUSE, P.O.PANNIPARA
(VIA) EDAVANNA, MALAPPURAM DISTRICT, PIN 676541.**

**BY ADVS.SRI.K.J.MOHAMMED ANZAR
SRI.T.B.GAFOOR**

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

**1. STATE OF KERALA, REP.BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI-682031.**

**2. THE SUB-INSPECTOR OF POLICE
EDAVANNA POLICE STATION, EDAVANNA
MALAPPURAM DISTRICT, PIN 676541.**

BY Sr. PUBLIC PROSECUTOR SMTL SAREENA GEORGE P.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13-03-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONERS' EXHIBITS

- ANNEXURE-A1:** TRUE COPY OF THE RC PARTICULARS OF THE VEHICLE OF THE PETITIONER BEARING REG.KL-13 N-7026.
- ANNEXURE-A2:** TRUE COPY OF THE FIR IN CRIME NO.37/2015 OF EDAVANNA POLICE STATION IN MALAPPURAM DISTRICT.
- ANNEXURE-A3:** TRUE COPY OF THE PASS DATED 6.1.2015 ISSUED BY THE SECRETARY, EDAVANNA GRAMA PANCHAYATH IN TRANSPORTING RIVER SAND IN THE VEHICLE OF THE PETITIONER.
- ANNEXURE-A4:** TRUE COPY OF THE RELEVANT PAGE OF REGISTER OF EDAVANNA GRAMA PANCHAYATH.
- ANNEXURE-A5:** TRUE COPY OF THE MEMO DATED 12.02.2015 FILED BY THE GOVT.PLEADER IN O.P.CRL.NO.30/2015.
- ANNEXURE-A6:** CERTIFIED COPY OF THE ORDER DATED 23.2.2015 IN CMP NO.466/2015 OF JFCM COURT-I, MANJERI.
- ANNEXURE-A7:** TRUE COPY OF THE JUDGMENT DATED 27.2.2015 IN O.P.(CRL) NO.30/2015 OF THIS HON'BLE COURT.
- ANNEXURE-A8:** TRUE COPY OF THE JUDGMENT DATED 31.10.2013 IN WPC NO.26046/2013 OF THIS HON'BLE COURT.

RESPONDENT'S EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P.UBAID, J.

Crl.M.C. No.1632 of 2015

Dated this the 13th March, 2015

O R D E R

On the allegation that the petitioner's vehicle No.KL-13-N-7026 was used for transportation of river sand illegally, the Sub Inspector of Police, Edavanna seized the said vehicle along with the sand. Crime No.37/2015 was also registered by the police. Besides the Penal Sections under the Kerala Protection of River Banks and Regulation of Removal of Sand Act (for short, 'the Sand Act'), the police incorporated Section 379 IPC also in the FIR. The driver of the vehicle claimed that the sand was being transported under a valid pass issued by the authority. Without considering this fact, seizure was reported to Court and the vehicle was also produced in court. The petitioner filed application before the learned Judicial First Class Magistrate Court-I, Manjeri as CMP No.466/2015, for interim custody of the vehicle. Though the police objected on the ground that the Revenue Divisional Officer has passed confiscation orders, the learned Magistrate granted custody of the vehicle to the petitioner on certain conditions. The petitioner is aggrieved by the conditions. During this

proceeding the petitioner produced the original registration certificate of the vehicle, and also original pass obtained from the authority for transportation of sand. On a perusal of the original pass, I find nothing prima facie to suspect. If transportation of sand was under a valid pass, the police will have to think whether the prosecution should continue or not. The police will have to examine the pass and find out whether it is genuine. One of the conditions imposed by the learned Magistrate to release the vehicle is that the petitioner shall deposit an amount of Rs.30,000/- in court. Even in cases whether there is scope for a prosecution under the Sand Act, the Judicial Magistrate will have discretion in imposing conditions for releasing properties like vehicle, under Section 451 Cr.P.C. This Court has settled the legal position accordingly, after Section 23A was introduced in the Sand Act. It is submitted that the petitioner could not produce the pass before the Sub Inspector when he made seizure. However, the police proceeded with the prosecution, and ultimately the petitioner had to approach the court for custody of the vehicle. In the present circumstances, strict conditions are not necessary for releasing the vehicle to the petitioner. It will

suffice that he executes a bond with one solvent surety for Rs.50,000/- each. The direction to make cash deposit can be set aside.

In the result, this petition is allowed. The condition No.3 imposed by the learned Magistrate as per the impugned order dated 23.02.2015 in CMP No.466/2015 directing the petitioner to deposit Rs.30,000/-, will stand set aside on a further condition that the petitioner shall execute a bond with one solvent surety for Rs.50,000/- each.

Sd/-

P.UBAID, JUDGE

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