

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

Crl.MC.No. 2025 of 2015 ()

AGAINST THE ORDER IN CMP 636/2015 of J.M.F.C.,MALAPPURAM DATED
13-03-2015

CRIME NO. 28/2015 OF VAZHAKKAD POLICE STATION , MALAPPURAM

PETITIONER(S)/PETITIONER:

MISHAB CHEMMALA
S/O.UMMER, KANIYATHODI, KUZHIMANNA
ALINCHUVADU, MALAPPURAM DISTRICT

BY ADVS.SRI.BABU S. NAIR
SRI.K.RAKESH

RESPONDENT(S)/STATE & COMPLAINANT:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM, KOCHI 31
2. THE SUB INSPECTOR OF POLICE
VAZHAKKAD POLICE STATION
MALAPPURAM DISTRICT PIN 673 640.

R1 & R2 BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 2025 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A- TRUE OCPY OF THE ORDER PASSED BY THE J.F.C.M, MALAPPURAM
IN C.M.P. NO.636/2015 DATED 13.3.2015

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.
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**Crl.M.C No.2025 of 2015**  
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Dated this the 7th April, 2015

ORDER

The petitioner herein is the owner of the vehicle No.KL-10-AD/3673 involved in Crime No.28 of 2015 of the Vazhakkad Police Station, registered under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act. Pending investigation, he filed an application before the Judicial First Class Magistrate, Malappuram for interim custody of the vehicle. The learned Magistrate granted interim custody of the vehicle on certain conditions. In addition to the direction for bond for ₹ 2,10,000/- with two solvent sureties, the petitioner herein was directed to deposit ₹ 63,000/- in court and also to furnish bank guarantee for ₹ 1,47,000/-. The total value of the vehicle assessed by the transport authority is ₹ 2,10,000/-. The petitioner is aggrieved by the condition Nos.2 and 3 imposed by the court as per the order dated 13.3.2015, which is sought to be set aside.

2. On hearing both sides, I find the necessity of

interference in the objectionable condition No.3 imposed by the court. There is already a direction to execute bond appropriately, and the petitioner is also directed to deposit 30% of the value of the vehicle. In a post amendment decision, this Court has clarified the legal position after the introduction of Section 23A in the Kerala Protection of River Banks and Regulation of Removal of Sand Act. The new provision gives discretion to Judicial Magistrates in the matter of imposing appropriate conditions. Such conditions must be reasonable, rational and practical. It is not known why the petitioner should furnish bank guarantee when there is already a direction to execute bond and to make cash deposit.

In the result, this petition is allowed in part. The objectionable condition No.3 imposed by the court below as per the order dated 13.3.2015 in C.M.P. No.636 of 2015 directing the petitioner to furnish bank guarantee will stand set aside.

**Sd/-
P.UBAID
JUDGE**

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