

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.MC.No. 2121 of 2015 ()

**(CMP.NO. 635/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM
DATED 13-03-2015)**

PETITIONER/PETITIONER:

**MUHAMMED RAFI,
S/O.ABDUREHIMAN, PARAKKOLIL HOUSE,
CHEEKODE AMSOM DESOM, MALAPPURAM DISTRICT.**

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

RESPONDENT(S)/STATE AND 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.**

BY SR PUBLIC PROSECUTOR SMT.SAREENA GEORGE.P.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

CRL.M.C.NO.2121/2015

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEX A COPY OF THE ORDER PASSED BY THE J.F.C.M, MALAPPURAM IN
CMP.NO.635/2015 DATED, 13/3/2015.**

RESPONDENT'S ANNEXURES: NIL

/TRUE COPY/

PA.TO JUDGE

sts

P.UBAID, J.

Crl.M.C No.2121 of 2015

Dated this the 31st day of March, 2015

O R D E R

The petitioner claims to be the owner of the vehicle No.KL-11-V/6776 involved in Crime No.15/2015 of the Vazhakkad Police Station. The vehicle was seized by the police on the allegation that it was used for illicit transportation of river sand. The petitioner made an application before the Judicial First Class Magistrate Court, Malappuram for interim custody of the vehicle under Section 457 of the Code of Criminal Procedure. The learned Magistrate granted interim custody on certain conditions. The petitioner is aggrieved by the condition directing the petitioner to produce security of bank guarantee for ₹88,000/-. During the proceedings, the total value of the vehicle was assessed by the Motor Vehicles Inspector. A fraction of the value is directed to be deposited as cash security, and as regards the balance amount, there is a direction to produce bank guarantee.

2. This Court has recently made the legal position clear regarding discretion of Judicial Magistrates in such

matters. There is a post amendment decision in **Aboobacker v State of Kerala** (2014(3) KLT 26), settling position very clear.

The pre-amendment position was that strict conditions will have to be imposed for interim custody of vehicle under Section 451 Cr.P.C. But now the position stands changed. Section 23A introduced in the Sand Act by amendment gives discretion to Judicial Magistrates in the matter of imposing conditions for releasing the properties involved in crimes under the Kerala Protection of River Banks and Regulation of Removal of Sand Act. In many proceedings brought against the orders passed by the Judicial First Class Magistrate Court, Malappuram I have made this position very clear. The learned Magistrate still repeats such orders. It will have to be taken as defiance. Thus I find that the objectionable condition is liable to be quashed.

In the result, this Criminal Miscellaneous Case is allowed. The objectionable condition No.3 imposed by the court below as per the order dated 13.3.2015 in C.M.P No.635/2015 directing the petitioner to produce bank guarantee will stand quashed.

**P.UBAID
JUDGE**

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