

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

Cr1.MC.No. 2122 of 2015

AGAINST THE ORDER IN C.M.P No.18237/2014 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT, MALAPPURAM DATED 12-03-2015

PETITIONER/PETITIONER:

JASIR.K.P,
S/O.MOOSAKUTTY, KARIKAPARA HOUSE,
OTHUKKUNGAL P.O,
MALAPPURAM DISTRICT.

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

RESPONDENTS/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,
VENGARA POLICE STATION, MALAPPURAM DISTRICT
PIN-673640.

R1 & R2 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:

Crl.MC.No. 2122 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: COPY OF THE ORDER PASSED BY THE J.F.C.M MALAPPURAM IN
C.M.P NO.18237/2014 DATED 12.3.2015.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.2122 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-03 E/686 involved in Crime No.417/2014 of the 15/2015 of the Vengara 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 him to produce bank guarantee for ₹42,000/-. 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 12.3.2015 in C.M.P No.18237/2014 directing the petitioner to produce bank guarantee will stand quashed.

**P.UBAID
JUDGE**

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