

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.MC.No. 2207 of 2015

CRIME NO. 321/2015 OF AREACODE POLICE STATION , MALAPPURAM DISTRICT

PETITIONER(S)/ACCUSED :

**ABDUL NISAM, S/O.MAMMEDKUTTY, AGED 32 YEARS,
PALAPPARAMBIL HOUSE, KEEZHUPARAMBU, AREACODE,
MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S)/STATE & COMPLAINANT :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**
- 2. THE SUB INSPECTOR OF POLICE,
AREACODE POLICE STATION, MALAPPURAM DISTRICT,
PIN-673 638**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2207 of 2015

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Dated this the 10th day of June, 2015

O R D E R

The above said Crl.M.C. has been filed seeking the following prayer:

“.... to direct the 2nd respondent to report the seizure of vehicle bearing registration No.KL-07BB/6785 to the J.F.C.M.-I, Manjeri, and the Learned Magistrate may be directed to dispose of the application for interim custody of the vehicle, within a time frame, without any delay, in the interest of justice.”

2. The petitioner's vehicle in question was seized by the 2nd respondent in connection with the allegations relating to commission of offences under Sec.379 of the I.P.C. and Secs.20 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. This Court as per the interim order dated 6.4.2015 had earlier specifically directed the Station House Officer to immediately report the factum of seizure to the jurisdictional Magistrate court concerned, if the same had not been reported so far.

3. Today when the matter was taken up for consideration, the learned Public Prosecutor submitted, on instructions from the

2nd respondent Sub Inspector of Police, Areacode Police Station, Malappuram, that even till date the 2nd respondent has not submitted the requisite report regarding the seizure of the vehicle to the jurisdictional Magistrate concerned, as he had made such report before the Revenue Divisional Officer concerned. This is a highly unsatisfactory state of affairs and if an official like the 2nd respondent Sub Inspector of Police gives scant respect to the direction issued by this Court on 6.4.2015, it is really not understandable as to how he can have a governance mechanism based on rule law.

4. This Court in the case Kumkuma Priya v. State of Kerala, reported in 2015 (2) KLT 438, clearly and conclusively held that the right appropriate authority to consider the release of properties seized under Sec.23 of the aforementioned River Sand Act is the Judicial First Class Magistrate's Court concerned having jurisdiction over the area and not the Sub Divisional Magistrate.

5. In this view of the matter, it is ordered in the interest of justice that the report earlier filed by the 2nd respondent Sub Inspector of Police before the Sub Divisional Magistrate considered will stand rescinded. The 2nd respondent shall, within two days from

the date of receipt of a certified copy of this order, forward necessary report regarding the seizure of the vehicle in this case to the jurisdictional Magistrate's court concerned and this factum shall be intimated by him by registered post to the petitioner. Thereafter, the petitioner will be at liberty to make appropriate application before the jurisdictional Magistrate court concerned seeking interim custody of the vehicle in terms of Sec.451 of the Code of Criminal Procedure, upon which, the learned Magistrate shall consider the said application in accordance with law and in the light of the legal principles laid down by this Court in case Asharaf v. Station House Officer reported in 2015 (2) KLT 224. It is open to the petitioner to produce photocopies of the reported court rulings on the subject and the learned Magistrate shall consider the applicability of those court rulings to the fact of this case.

With these observations and directions, the Crl.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge

Cr1.M.C.2207/15

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