

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

Crl.MC.No. 2523 of 2015 ()

**CMP.NO. 1561/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-1, MANJERI
CRIME NO. 127/2015 OF AREACODE POLICE STATION, MALAPPURAM DISTRICT**

PETITIONER/PETITIONER:

**SAMEER C.K., S/O ABDUL RAZAK,
CHEKKANAMKANDI HOUSE, OMASSERY,
KOZHIKODE 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 -673 639**

BY PUBLIC PROSECUTOR SMT. S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-05-2015, ALONG WITH CRMC.NO. 2529/2015, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 2523 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEX A. TRUE COPY OF THE ORDER DATED, 19-3-2015 OF THE J.F.C.M-1,
MANJERI IN C.M.P.NO.1561/2015.**

RESPONDENT(S)' ANNEXURES **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

Crl.M.C. No.2523 & 2529 of 2015

Dated this the 26th day of May, 2015

ORDER

Crl.M.C.No. 2523/2015

The prayer in this Crl.M.C is an order directing deletion of the impugned condition Nos. 3 and 4 imposed by the court below as per the impugned Annexure A order rendered on 19/03/2015 in CMP No.15461/2015 arising out of crime No.127/2015 in Areacode Police Station. The matter relates the claim for the interim custody of the vehicle seized in connection with the commission of an offence under the provision of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 on the allegation that the vehicle was used for the illicit transportation of river sand. The learned Magistrate had issued the following conditions while granting the impugned custody of the vehicle as per impugned Annexure A order which reads as follows:

1. Petitioner shall execute a bond for Rs.1,90,000/- with two solvent sureties for the like sum, undertaking to produce the

vehicle as and when required.

2. He shall not transfer the vehicle or cause any alteration to it till the completion of confiscation proceedings.
3. He shall deposit Rs.57,000/- in the court.
4. He shall produce immovable property security or Bank guarantee for a sum of Rs.1,33,000 or in the alternative the sureties shall produce certified copies of their title deeds and latest tax receipts and shall execute a bond agreeing to realise the said amount from the property and undertaking that they will not alienate or encumber the property till the disposal of the case and they will produce the original title deed as and when required. If such a bond is executed by the sureties it shall be intimated to the Sub Registry Office concerned with a specific direction to the Sub Registry to endorse the same on records so as to show it as an encumbrance.
5. A photograph of the vehicle shall be taken in the presence of 1st respondent and the photograph and its negative shall be produced in the court.
6. A true attested photo copy of the RC shall be produced in the Court.
7. The 1st respondent shall prepare a Panchanama of the vehicle.
8. The petitioner shall file an affidavit undertaking that he shall not cause the vehicle to involve in a similar crime and that he shall produce the vehicle before the RDO for the purpose of confiscation proceedings, as and when directed.
9. The 1st respondent shall collect sample of sand in the presence of the petitioner for the purpose of analysis, if it is found necessary.

2. Sri.Babu S.Nair, learned counsel for the petitioner, submits that condition Nos. 3 and 4 are onerous and are not in

consonance with the legal position settled by this Court in decision as in Ashraf V. Station House Officer [2015(2) KLT 224]. Accordingly he seeks appropriate modification of the impugned condition Nos. 3 and 4 of the impugned order.

3. Heard learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondents.

4. This court held in the aforementioned decision in Ashraf's case (supra) that interim custody of vehicle seized under the provisions of the above said Act can be granted only subject to satisfaction of the 30 % of the value of the vehicle and on furnishing security for the balance amount of the value and that the said guidelines laid down by the full Bench of this Court in the case Shan v. State of Kerala reported in 2010 (3) KLT 413 (F.B.) is not watered down in spite of the subsequent amendment made to the Act. It is held therein that sufficiency of the security will naturally depend upon the value of the vehicle and that such valuation has been done by assessment by the authorities in the motor vehicle department.

5. In this view of the matter it is ordered in the interest of justice that condition Nos. 3 and 4 will be modified as

hereunder:–

It has to be ensured that the valuation of the seized vehicle is got done by due assessment of the same by the Assistant Motor Vehicle Inspector concerned without any further delay. Based on such valuation so made by the Assistant Motor Vehicle Inspector concerned, the petitioner will have to furnish 30% of the value of the vehicle so assessed by cash deposit to be made before the court below and he has to furnish security by way of immovable property for the balance 70% of the value of the vehicle so assessed, before the court below. It is open to the petitioner to produce certified copy of this order before the court below and further steps in this matter will have to be taken as directed above and on the petitioner complying with the conditions as stated above herein, necessary action be taken without any further delay. It is made clear that condition Nos. 1, 2, 5, 6, 7, 8 and 9 of the impugned Annexure–A remain unaltered. Consequently, it is

further ordered that condition No. 1 of the impugned Annexure-A order will also stand modified to the extent that the amount shown therein will be the value so assessed by the Assistant Motor Vehicle Inspector as directed above. On petitioner satisfying the conditions as modified above and the other conditions in the impugned order, the interim custody of the vehicle shall be granted to him without any further delay.

Crl.M.C.No. 2529/2015

6. This case is also similar to Crl.M.C.2523/2015. In the light of legal position settled by this court in Ashraf v. Station House Officer reported in 2015(2) KLT 224, it is ordered in interest of justice that impugned conditions 2 and 3 will stand modified as hereunder.

7. The valuation of the seized vehicle shall be got done through the Assistant Motor Vehicle Inspector concerned and based on such valuation, the petitioner will have to furnish cash security for 30% of the value of the vehicle so assessed and will have to furnish security by way of immovable property for the

balance 70 % of the assessed value of the vehicle. Condition No.1 of Annexure-A will accordingly stand modified to the extent that the amount mentioned therein will stand substituted by amount as valued by the Assistant Motor Vehicle Inspector as directed above.

On the petitioner producing certified copy of this order to the court below, further steps in the matter will be taken and on the petitioner complying with the modified condition as directed above and other conditions in Annexure A, the interim custody of the vehicle shall be released without further delay.

Sd/- ALEXANDER THOMAS
JUDGE

MJL