

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937

Crl.MC.No. 3509 of 2015

CRIME NO. 657/2014 OF PAYYANNUR POLICE STATION , KANNUR

PETITIONER(S):

**MOIDEEN KUTTY M.C., S/O.HASSAN.P,
14/437(21/426A)MADAKKA CHATTIKKL,
PUNCHAKKAD, PAYYANNUR P.O., TALIPARAMBA,
KANNUR DISTRICT.**

BY ADV. SRI.M.V.AMARESAN

RESPONDENT(S)/COMPLAINANT:

- 1. SUB DIVISIONAL MAGISTRATE,
THALASSERY, PIN-671 104.**
- 2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031
(THROUGH PAYYANNUR POLICE).**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 3509 of 2015

APPENDIX

PETITIONERS' ANNEXURES

ANNEXURE 1: COPY OF REGISTRATION CERTIFICATE OF THE VEHICLE REG.NO.KL-13-M-4805.

ANNEXURE 2: COPY OF PERMIT OF THE VEHICLE BEARING REG.NO.KL-13-M-4805 DATED 8/3/14

ANNEXURE 3: COPY OF NOTICE BEARING NO.G2/6519/14 DATED 30/4/15 ISSUED BY THE R1 TO THE PETITIONER

RESPONDENTS' ANNEXURE

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No.3509 of 2015

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Dated this the 12th day of June, 2015

ORDER

The prayers in this Crl.M.C. are as follows:

- “(i) direct the 1st respondent to return the vehicle bearing Reg.No.KL-13-M-4805 involved in crime No.657/2014 of Payyanur Police Station to the petitioner;
- (ii) to further direct the 1st respondent to complete confiscation proceedings in respect of the vehicle bearing Reg.No.KL-13-M-4805 within a time frame, as provided under Section 23A of the Kerala Protection of River Banks and Regulation of Removal of Sand Act after sending sample of sand taken in the presence of the petitioner to laboratory test for report.”

2. It is averred by the petitioner that Annexure-3 notice dated 30/04/2015 said to have been issued by the Sub Divisional Magistrate, Thalassery is in relation to confiscation proceedings against the seized vehicle for the alleged offence under Section 23A of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001.

3. This Court in the case Kumkuma Priya v. State of Kerala reported in 2015(2) KLT 438 that the power to consider the issue of interim release of the vehicle is vested with the Jurisdictional

Magistrate and not with the Sub Divisional Magistrate. The modalities and just and fair conditions that may be necessary to be imposed while considering such prayer for interim release of the vehicle has been dealt with by this Court in the case Asharaf v. Station House Officer reported in 2015 (2) KLT 224.

4. The learned Public Prosecutor submits that in case the Station House Officer has not yet reported the seizure of the vehicle before the Jurisdictional Magistrate concerned, he should ensure that the Station House Officer concerned will report the seizure of the vehicle involved in this case to the Jurisdictional Magistrate concerned without any further delay.

5. Under the circumstances, it will be open to the petitioner to make an appropriate application to the Jurisdictional Magistrate concerned, under Section 451 of the Cr.P.C with the prayer seeking interim release of the vehicle in question and upon which the Jurisdictional Magistrate concerned will deal with the same and decide thereon in accordance with law in the light of the legal principles well settled by this Court in court rulings in that regard. It is open to the petitioner to rely on the reported rulings of this Court before the learned Magistrate.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL