

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

Crl.MC.No. 3755 of 2015 ()

**CRIME NO. 673/2014 OF PAYANGADI POLICE STATION , KANNUR DISTRICT
CMP.NO.176/2015 IN STC.NO.3286/2014 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, PAYYANNUR)**

PETITIONER/PETITIONER/REGISTERED OWNER:

**RATHEESH P,
S/O.KRISHNAN.M, PALERI, PEROOL.P.O.,
MATHAMANGALAM BAZAR, KANNUR DISTRICT.**

**BY ADVS.SRI.O.V.MANIPRASAD
SRI.JOSE ANTONY**

RESPONDENT/RESPONDENT/COMPLAINANT:

**THE STATE OF KERALA,
(STATION HOUSE OFFICER,
PAYANGADI POLICE STATION IN CRIME NO.673/2014),
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.N.SURESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

sts

Crl.MC.No. 3755 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX A1- A TRUE COPY OF THE FIR IN CRIME NO.673/2014 OF PAYANGADI
POLICE STATION.**
- ANNEX A2- A TRUE COPY OF THE REPORT FILED BEFORE THE LEARNED
MAGISTRATE ON 31.10.2014.**
- ANNEX A3- A TRUE COPY OF THE ORDER IN CMP NO.176/2015 IN STC
NO.3286/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PAYYANNUR.**
- ANNEX A4- A TRUE COPY OF THE JUDGMENT DATED 18.03.2015 IN STC
NO.3286/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
PAYYANNUR.**
- ANNEX A5- A TRUE COPY OF THE APPLICATION SUBMITTED AS CMP
NO.2586/2015.**
- ANNEX A6- A TRUE COPY OF THE DOCKET SHEET ORDER IN CMP NO.2586/2015
IN STC NO.3286/2014 DATED 13.05.2015.**

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Dated this the 30th day of June, 2015.

ORDER

The order challenge is the one impugned at Anx-A6 rendered on 13.5.2015 on C.M.P.No.2586/2015 in S.T.C.No.3286/2014 on the file of the Judicial First Class Magistrate Court, Payyannur. Earlier the petitioner was granted interim custody of the vehicle seized in connection with the crime registered under Sec.20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act as per Anx-A3 order rendered on 2.2.2015 by the Judicial First Class Magistrate Court, Payyannur. The conditions imposed in Anx-A3 for grant of interim custody of the vehicle to the petitioner as contained in para 5 of Anx-3 reads as follows:

- “1. He shall deposit an amount of Rs.42,000/- before the court.
2. He shall execute a bond for Rs. 3 lakhs with two solvent sureties each for the like sum.
3. He shall produce the vehicle as and when directed by the court.
4. He shall produce the photograph of the vehicle attested by himself and SHO Payangadi.

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5. He shall not mould, encumber, mortgage or alienate the vehicle.

6. He shall produce the vehicle as and when directed by the court at which confiscation proceedings are pending.”

2. It is pointed out that some of the requirements in the conditions imposed in para 5 of Anx-A3 order have not been complied with and therefore he could not avail interim custody of the vehicle so ordered by Anx-A3. The petitioner is not an accused in the crime and happened to be only the RC owner of the seized vehicle.

3. Later, by Anx-A4 judgment dated 18.3.2015, the Judicial First Class Magistrate Court-I in S.T.C.No.3286/2014 convicted the accused and sentenced to pay a fine of Rs.8,000/- under Sec.20 of the above said Act with a default clause. Subsequent to Anx-A4 order, the petitioner submitted Anx-A5 petition in Crl.M.P.No.2586/2015 to effectuate release of the vehicle which is now seen denied as per Anx-A6 without considering the merits of the matter. It is stated that the petitioner was constrained to close it as not pressed in view of the persistent stand taken by the learned Magistrate that he has no jurisdiction to consider any further question of interim release of the vehicle after conviction of the accused in the case and remitted the

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petitioner to the Sub Divisional Magistrate, who is the confiscating authority as per the provisions of the above said Act.

4. Heard Sri.O.V.Maniprasad, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

5. The matter in issue is res integra and fully covered by the principles laid down by this Court in the case Kumkuma Priya R.Y. v. State of Kerala & anr. reported in 2015 (3) KHC 195 para 6 & 7 which reads as follows:

“6. Thus on an analysis of the provisions contained in Section 23A of the Sand Act I find that the right authority to release properties seized under Section 23 of the Sand Act, is in fact the Judicial First Class Magistrate having jurisdiction over the area, and not the Sub Divisional Magistrate. It is very clear that the power of Sub Divisional Magistrate is only to decide on confiscation. Once he gets the report of seizure under Sub Section 1, the Sub Divisional Magistrate will have to initiate confiscation proceedings, he will have to give proper notice as required under Sub Section 3, to the person concerned, and under Sub Section 4 he is authorised to take appropriate decision regarding confiscation.

7. As observed earlier, the last part of Sub Section 1 to Section 23A of the Sand Act is very clear that once a property is seized under Section 23, the procedure under Section 102 Cr.P.C.

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will have to be followed. This means that the property, if possible, will have to be produced before the Judicial First Class Magistrate having jurisdiction, in compliance of the provisions under Section 102 Cr.P.C. This provision in the last part of Sub Section 1 will have to be read along with Sub Section 2 which provides that the question of releasing properties in interim custody shall be decided by the said Judicial First Class Magistrate having jurisdiction. Section 23A does not anywhere provide that Sub Divisional Magistrate can take decision regarding interim custody of the property seized under Section 23A of the Sand Act. Of course any decision taken by the judicial authority regarding interim custody, will always be subject to the confiscation orders passed by the Sub Divisional Magistrate under Sub Section 4. Thus confiscation is within the exclusive powers of Sub Divisional Magistrate, whereas releasing properties in interim custody under Section 451 Cr.P.C. or under Section 457 Cr.P.C. is the exclusive jurisdiction of the Judicial Magistrate having jurisdiction over the area."

6. In the light of the aforestated decision of this Court, it is ordered in the interest of justice that the impugned Anx-A6 refusal order is set aside and Anx-5 Crl.M.P.No.2586/2015 filed in S.T.C.No.3286/2014 is remitted back to the Judicial First Class Magistrate Court, Payyannur, for consideration afresh. The learned Magistrate shall consider the matter afresh in the light of the legal principles well settled by this Court in Kumkuma Priya's case (supra)

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and take a decision thereon after affording reasonable opportunity of being heard to the petitioner through his counsel, if any, and to the Investigating Officer through the Public Prosecutor concerned. Decision in this regard shall be taken within ten days from the date of receipt of a certified copy of this order. This shall be without prejudice to initiation and continuance of the confiscation proceedings.

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

ALEXANDER THOMAS,
Judge.

bkn/-