

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

Crl.MC.No. 4611 of 2015

**CRIME NO. 188/2015 OF PAYANGADI POLICE STATION , KANNUR
CMP.2880/2015 IN STC.1498/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
PAYYANNUR**

PETITIONER/PETITIONER:

**JASIM.C.K, AGED 33 YEARS,
S/O. MOIDU HAJEE, CHOMBAKKADATH HOUSE,
NEAR SULTHAN BRIDGE, MADAYI P.O., KANNUR DT.**

**BY ADVS.SRI.ZUBAIR PULIKKOOL
SRI.P.S.BINU**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
ERNAKULAM.**

BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 28-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

Crl.MC.No. 4611 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES

**ANNEXURE I- COPY OF THE ORDER IN CMP NO. 2880/15 IN S.T.C.NO. 1498/15 ON THE
FILE OF J.F.C.M.COURT, PAYYANNUR.**

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No.4611 of 2015

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Dated this the 28th day of July, 2015

ORDER

The order under challenge is the one at Anx.I rendered on 23.5.2015 in Crl.M.P.No.2880/2015 in S.T.No.1498/2015 on the file of the Judicial First Class Magistrate's Court, Payyannur. As per the said order, interim custody of the vehicle of the petitioner seized in connection with the impugned crime involving offence under Sec.279 of the I.P.C. and Secs.20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act was granted to the petitioner, subject to the following conditions:

- "1. He shall deposit an amount of Rs. 60,000/- before the court being the 30% of the value of the vehicle.
2. He shall produce bank guarantee or landed property stands in the name of petitioner for the balance amount. He shall produce original bank guarantee or original title deed of the property as the case may be.
3. He shall produce the vehicle as and when directed by this court.
4. He shall produce the photograph of the vehicle attested by himself and S.H.O. Payangadi.
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.
7. Interim custody is subject to the confiscation proceedings are pending before the S.D.M. Court."

2. The petitioner submits that impugned condition No.2 of Anx.I is too onerous for the petitioner because of his impecunious financial circumstances and that the impugned condition No.2 may be either deleted or modified by ordering that the petitioner could execute the bond for the said amount. This plea is made on the basis of the submission that the petitioner is not having any landed property and moreover he cannot raise the requisite bank guarantee to that level and that therefore it is impossible for the petitioner to comply with condition No.2 and that the vehicle will be exposed to sun and rain constantly, which would deteriorate the vehicle thoroughly to the benefit of none.

3. Heard Sri.Zubair Pulikool, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. The impugned condition No.2 was imposed by the court below on the basis of the ruling of this Court in the case Faisal v. Assistant Sub Collector, reported in 2015 (1) KLT 949, wherein it was held that even after the amendment made to the Act concerned,

there is no substantial change in the legal position enunciated by the Full Bench of this Court in Shan v. State of Kerala reported in 2010 (3) KLT 413 (FB) and that therefore in view of the view taken by the Full Bench in Shan's case supra, the impugned condition is only necessary and proper and it cannot be said that the said condition is illegal or improper. In the light of these aspects, the plea of the petitioner cannot be acceded to. Needless to say, it will be open to the petitioner to make appropriate application, if there is change in the circumstances.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge