

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

Crl.MC.No. 4910 of 2015

**ORDER DATED 14.7.2015 IN CMP 2848/2015 OF JUDICIAL FIRST CLASS MAGISTRATE
COURT, MALAPPURAM**

CRIME NO. 323/2015 OF VAZHAKKAD POLICE STATION, MALAPPURAM

.....

PETITIONER(S):

**SHIHABUDEEN, S/O.AHAMMED KUTTY,
MELAPPARAMBA HOUSE, KEEZHUPARAMBA AMSOM, KUNIYIL,
MALAPPURAM DISTRICT.**

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/COMPLAINANT & STATE:

- 1. SUB INSPECTOR OF POLICE,
VAZHAKKAD POLICE STATION, MALAPPURAM - 673 633.**
- 2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.**

BY PUBLIC PROSECUTOR SRI.GITHESH R.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
05-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Crl.MC.No. 4910 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNX.A - TRUE COPY OF THE PETITION DATED 18.04.2015 FILED BY THE PETITIONER
WHICH IS NUMBERED AS CMP NO.2848/2015 ON THE FILE OF JUDICIAL
FIRST CLASS MAGISTRATE COURT, MALAPPURAM.**

**ANNX.B - TRUE COPY OF THE ORDER DATED 14.07.2015 IN CMP NO.2848/2015 ON
THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, MALAPPURAM.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.A.TO JUDGE.

Ms v/

ALEXANDER THOMAS, J.

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Crl.M.C.No. 4910 of 2015

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Dated this the 5th day of August, 2015

ORDER

This Crl.M.C. is filed for orders from this Court to set aside impugned condition Nos.2 and 3 of Anx.B order dated 14.7.2015 rendered on Crl.M.P.No.2848/2015 in Crime No.323/2015 of Vazhakkad Police Station. The petitioner is accused in Crime No. 323/2015 and his tipper lorry was seized in connection with that crime involved for offences under Secs.379 read with 34 of the I.P.C. and Secs.12, 23 read with Sec.20 of the Kerala Protection of River Banks And Regulation of Removal of Sand Act, 2001.

2. Heard Sri.P.V.Kunhikrishnan, learned counsel appearing for the petitioner and learned Public Prosecutor appearing for the respondent State of Kerala.

3. Impugned condition Nos.2 and 3 of Anx.B order read as follows:

“..... the vehicle can be released to the petitioner on satisfying the following conditions:

“1...

2. Petitioner shall deposit Rs. 23,000/- in the court.

3. Petitioner shall produce bank guarantee of Rs. 55,000/-."

4. The matter in issue is no longer res integra and is covered by the decision of this Court in Faisal v. Asst. Sub Collector reported in 2015 (1) KLT 949, wherein this Court has held in para 14 thereof that in the light of the Full Bench decision of this Court Shan v. State of Kerala 2010 (3) KLT 413 (F.B.) interim release of the vehicle involved in the offences under the River Sand Act could be considered only subject to the satisfaction of 30% of the value of the vehicle and on furnishing for the balance amount as prescribed.

Para 14 of the Faisal's case supra reads as follows:

"14. Sufficiency of the security as in the instant case will naturally depend upon the value of the vehicle and how the value has to be assessed, has already been made clear by this Court on many an occasion, by getting the same duly assessed by the authorities of the Motor Vehicle Department. The Full Bench of this Court in 2010 (3) KLT 413 (cited supra) laid down that the interim custody of the vehicle involving an offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act could be released, only subject to satisfaction of 30% of the value of the vehicle and on furnishing security for the balance amount as specified. The law laid down by the Full Bench stands as it is. The amendment of the statute, particularly by virtue of Section 23A, has not resulted any change or consequence with regard to the position as mentioned above, nor has the effect been watered down in any manner. In so far as the law declared by the Full Bench of this Court stands intact and not varied, no Magistrate or other Officers under the Act can act contrary to it. As such, the interim custody can be released only on satisfaction of 30% of the value of the vehicle and on furnishing security for the balance amount as ordered by the Full Bench."

Therefore, the impugned condition No.2 does not suffer from any illegality and therefore is not liable to be interdicted by this Court in

any manner. However, the impugned condition No.3 insisting only for bank guarantee for the balance 70% amount does not appear to have been insisted after due diligent exercise of discretion by the court below. The furnishing security for the 70% of the balance amount is as specified and is not necessarily only bank guarantee. Therefore, in the interest of justice, the impugned condition No.3 of Anx.B order will stand modified and substituted by the direction that the petitioner shall furnish security by way of immovable property of the value to the tune of Rs. 55,000/-. It is made clear 5that Anx. B order on all other respects would remain unaltered.

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

Cr1.M.C.4910/15

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