

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 18TH DAY OF AUGUST 2015/27TH SRAVANA, 1937

Crl.MC.No. 5483 of 2015

ORDER IN Crl.MC.NO.3816 OF 2015, DATED 24.06.2015.

PETITIONER(S)/ACCUSED:

**MANOJ, AGED 31 YEARS,
S/O.SAVITHRI, MEENATHERIL VEEDU, VALLIKUNNAM MURI,
ALAPPUZHA DISTRICT.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S) :

**SUB INSPECTOR OF POLICE,
POLICE STATION, VALLIKUNNAM,
ALAPPUZHA-688 001.**

BY PUBLIC PROSECUTOR SMT.P.MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 18-08-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

ANNEXURE-A: COPY OF THE R.C BOOK.

ANNEXURE-B: COPY OF THE SEIZURE MAHAZAR.

ANNEXURE C: COPY OF THE ORDER IN CRL.MC NO.3816/2015.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No.5483 of 2015

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Dated this the 19th day of August, 2015

O R D E R

It is stated that the petitioner is the owner of the vehicle bearing registration No.KL 31 D 3663, which has been seized as per the provisions under the Mines and Minerals (Development & Regulation) Act (MMDR Act). The respondent Sub Inspector of Police, Vallikunnam Police Station, Alappuzha district, handed over the case to the District Collector, Alappuzha, instead of producing before the jurisdictional Magistrate's court concerned as per the decision laid by this Court in the judgment in Crl.R.P.No.1487/2014, reported in Anfar v. State of Kerala [2014 (4) KLT SN 59 (C.No.73)]. It is pointed out that as per the aforestated ruling of this Court in the case Anfar's case supra, it is not the District Collector, who is the competent authority to decide on the question of interim custody of the vehicle. Accordingly, it is prayed by the petitioner that necessary directions may be issued to ensure interim release of the petitioner's aforestated vehicle, which has been seized by the

respondent.

2. Heard Sri.R.Sunil Kumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent.

3. In the case *Anfar v. State of Kerala* reported in 2014 (4) KLT SN 59 (C.No.73), it has been held by this Court that under Sec.21(4) of the MMDR Act, the District Collector has no power to pass orders regarding the custody or confiscation of the property seized under Sec.21(4A) of the Act and that any order regarding the property seized under Sec.21(4A) including the confiscation orders will have to be passed by the court having jurisdiction. It was held by this Court that the District Collector is not the authorised officer in view of the provisions contained in Sec.21(4A) of the MMDR Act. That any property seized under Sec.21(4A) shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-sec.(1) and shall be disposed of in accordance with the directions of such court. Since the case on hand was one where the property seized by the Police under Sec.21(4A) of the MMDR Act and so any order regarding the property, including the confiscation orders thereon, will have to be passed by the court

having jurisdiction.

5. In the result, it is ordered in the interest of justice that in case the respondent Sub Inspector of Police, Vallikunnam Police Station, has already forwarded and referred the case to the District Collector, Alappuzha, then it is made clear that such action is ultra vires. Accordingly, the respondent shall ensure that the case papers are taken back from the office of the District Collector, in case the same has already been forwarded by the respondent to that office and it shall be ensured that the seizure report regarding the seizure of the vehicle shall be forwarded to the jurisdictional Magistrate's court concerned. This shall be done within a period of ten days from the date of production of certified copy of this order by the petitioner or by the Public Prosecutor concerned. After forwarding such report of seizure to the competent jurisdictional Magistrate's court concerned, the respondent shall thereupon give intimation by registered speed post addressed to the petitioner that such seizure report has already been forwarded to the jurisdictional Magistrate's court concerned as directed in this order. Thereafter it will be open to the petitioner to make appropriate application before the jurisdictional Magistrate's court concerned for interim custody of the

vehicle, upon which, the court below shall consider the prayer in such application on merits after affording a reasonable opportunity of being heard to the petitioner, through his counsel, if any, and to the learned Public Prosecutor appearing for the State.

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

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge