

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Cr1.MC.No. 7122 of 2014

AGAINST THE ORDER OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
MANNARKKAD IN C.M.P 6632/2014 IN O.R NO.3/2014 OF THE MANNARKAD
FOREST STATION, PALAKKAD

PETITIONER/PETITIONER:

JOBBY, AGED 37 YEARS,
S/O. JOSEPH, PANAMTHOTTATHIL HOUSE, PAYYANADAM,
KUMARAMPUTHUR, MANNARKKAD, PALAKKAD DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS/STATE AND COMPLAINANT:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031.
2. THE FOREST RANGE OFFICER,
MANNARKKAD FOREST STATION, MANNARKKAD
PALAKKAD DISTRICT, PIN:678 582.

SRI.M.P MADAVANKUTTY, SPL. GOVT. PLEADER FOR FOREST.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 7122 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A: COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE JFCM MANNARKKAD AS CMP NO.6632/2014 DATED 1.12.2014

ANNEXURE B: COPY OF THE ORDER OF THE JFCM, MANNARKKAD IN CMP
NO.6632/2014 DATED 3.12.2014.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.7122 of 2014

Dated this the 21st day of January, 2015

O R D E R

A condition imposed by the Judicial First Class Magistrate, Mannarkkad for release of the petitioner's vehicle under Section 451 of the Code of Criminal Procedure is under challenge, and it is sought to be set aside under Section 482 of the Code of Criminal Procedure. The said vehicle was seized by the Forest Range Officer of Mannarkkad Forest Range on the allegation that the petitioner and the others trespassed into the government forest, killed a samba deer, and transported the meat in the said autorickshaw. Of course the learned Magistrate granted relief under Section 451 of the Code of Criminal Procedure, on condition that the petitioner shall furnish bank guarantee for ₹1,25,000/- besides executing a bond for the said amount. The third condition imposed by the learned Magistrate is that the petitioner will produce the vehicle as and when required by the court.

2. The grievance of the petitioner is that the direction made by the court below to furnish bank guarantee for

₹1,25,000/- is unreasonable and irrational. The prosecution against him is brought under the provisions of Kerala Forest Act, and also the Wild life (Protection) Act, 1972. Section 39 of the Wildlife (Protection) Act provides that every wild animal described under clause (a) or every animal, article or trophy etc. described in clause (b) or every material described in Clause (c) or every vehicle or weapon, trap etc. used in the commission of offence punishable under the Wildlife (Protection) Act shall be the property of the government. The Act also contains provision for forfeiture of the properties including such vehicles. In fact while providing such measures for forfeiture of property and declaring that such property shall be government property, the Act also provides for composition of offences.

3. The petitioner relies on **Mathew v. Range Officer (2004(2) KLT 865)** where this Court held that the vehicle seized under the Wildlife (Protection) Act will become property of the Government only when it is found by the Court that the offence is committed, and not when the property seized initially. He also relies on the decision of this Court in **Mohammed Ismail v. State of Kerala (2004(3) KLT 322).** This Court has held that Judicial Magistrates will have the power

to release the property seized under the Wildlife (Protection) Act, of course on appropriate conditions. Of course, in this case, I find that appropriate conditions are required to ensure production of the vehicle in court. But such conditions imposed by the court cannot be unreasonable or irrational. It is not known what exactly is the value of the vehicle involved in the crime. It is also not known how the learned Magistrate fixed amount of ₹1,25,000/-. Anyway, in the particular facts and circumstances, I feel that the alleged condition, by which the petitioner is really aggrieved, can be slightly modified. Even while modifying the conditions, this Court will have to ensure production of the property for the purpose of trial or other purposes, including forfeiture. I feel that the direction to furnish bank guarantee can be set aside, and instead the petitioner can be directed to make deposit of a reasonable amount by way of security. Another additional condition also can be imposed that the petitioner shall not transfer, sell or otherwise dispose of the vehicle till final decision is taken by the court. In the particular facts and circumstances, I feel that the petitioner can be directed to make security deposit of $\frac{1}{4}$ th of the bond amount fixed by the court below.

In the result, this Criminal Miscellaneous Case is allowed in part. The condition imposed by the court below that the petitioner shall furnish bank guarantee for ₹1,25,000/- will stand set aside, subject to the following conditions imposed by this Court, that the petitioner shall make security deposit of 1/4th of the amount of bond fixed by the court, and that the petitioner shall not sell, transfer or otherwise dispose of the vehicle till final decision is taken by the Court.

**P.UBAID
JUDGE**

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