

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 30TH DAY OF JUNE 2014/9TH ASHADHA, 1936

Crl.MC.No. 3519 of 2014 ()

CRIME NO. 108/2014 OF VIDYANAGAR POLICE STATION, KASARAGOD DISTRICT

PETITIONER/PETITIONER :

**KUNHAMMAD K.M., AGED 32 YEARS
S/O.MOHAMMED, KODIMAJAL HOUSE,
SHIRIBAGILU P.O., MADHUR
KASARAGOD DISTRICT.**

**BY ADVS.SMT.HEMALATHA
SRI.BINU GEORGE**

RESPONDENT/RESPONDENT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM -682 031.
(CRIME NO.108/2014 OF VIDYANAGAR POLICE STATION).**

BY PUBLIC PROSECUTOR SMT. P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 30-06-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Mn

...2/-

Crl.MC.No. 3519 of 2014 ()

APPENDIX

PETITIONERS' EXHIBITS :

**ANNEXURE-I: CERTIFIED COPY OF ORDER IN CMP NO.2204/2014 DATED 28.5.2014
OF JUDICIAL FIRST CLASS MAGISTRATE - I, KASARAGOD.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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K.RAMAKRISHNAN, J.
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CRL.M.C.NO.3519 OF 2014
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Dated this the 30th day of June, 2014

ORDER

This is an application filed by the petitioner challenging the condition imposed by the court below for releasing the vehicle in Crl.M.P.2204 of 2014 in Crime No.108 of 2014 of Vidyanagar Police Station in Kasaragod District on the files of Judicial First Class Magistrate Court, No-I, Kasaragod under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is the owner of the TATA Tipper lorry with registration No.KL-14-P 3065 which was intercepted by the Sub Inspector of Police, Vidyanagar police station when he found that the vehicle being used for alleged illegal transportation of river sand he seized the vehicle and he had registered a case as crime No.108 of 2014 of that police station under the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001(Hereinafter called as Sand Act). The petitioner filed Crl.MP.No.2204 of 2014 for interim custody of the vehicle and the learned Magistrate, after getting the value of the vehicle assessed through the Assistant Motor Vehicle Inspector, allowed the application granting inerim custody relying on the decision reported in **Shan V State of Kerala 2010(3)KLT 413** with

conditions inter alia that the petitioner shall deposit 30% of the amount assessed by the authorities and furnish bank guarantee or property security for the balance amount with other conditions. The condition directing the petition is to deposit the amount and furnish bank guarantee or property security are being challenged by the petitioner by filing this petition.

3. Heard the counsel for the petitioner and the learned Public prosecutor.

4. Counsel for the petitioner submitted that after the decision relied on by the learned Magistrate, the Act was amended by incorporating Section 23 (A) which has come in to force with effect from 25.11.2012 and there such a conditions has not been contemplated and a discretion was given to the Magistrate to fix the security and that has not been taken note by the learned Magistrate. So the counsel prayed for allowing the application by modifying the condition.

5. The application opposed by the learned Public Prosecutor on the ground that even after the amendment there is no change in the dictum laid on the decision relied on by the Court below.

6. It is an admitted fact that the petitioner is the registered owner of the TATA Tipper Lorry with registration No.KL-14-P 3065 which was seized by Vidyanagar police when it was found transporting with sand in that vehicle which according to the

prosecuting officer that it was a river sand transported in violation of the provisions of the Sand Act. The learned Magistrate has relied on the decision reported in **Shan V State of Kerala [2010(3) KLT 413]** which was later followed by this Court in **Sujith V State of Kerala [2012(2) KLT 547]** for imposing the condition.

7. But after the decision of this Court, the legislature had amended the Sand Act by addition Section 23A which reads as follows:-

"23A. Confiscation of sand, vehicles, etc., (1) where any property is seized under Section 23, the officer seizing such property shall seal all such properties for indicating that the same is seized and shall, whether prosecution proceedings have been initiated or not, within forty eight hours of such seizure make a report of such seizure before the Judicial Magistrate and before the Sub Divisional Magistrate having jurisdiction over the area from where the said properties are seized and the fact of such seizure shall be informed to the Station House Officer of the Police Station, having jurisdiction over the area. Where information regarding such seizure of propriety is received, the Police Officer concerned shall take steps under Section 102 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974)."

(2) Where a report under sub-section (1) is received before the Judicial Magistrate having jurisdiction, steps thereon, not contrary to the other provisions of this Act, shall be taken as per the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and, if no claim is raised regarding the articles seized or where the Court is satisfied that the application to release them are not satisfactory, they shall be subjected to confiscation under sub-section (4):

Provided that the disposal or release of the properties seized, for its safe custody, to any person, shall be on sufficient security and such disposal or release shall be till the completion of the confiscation proceedings under this Act:

Provided further that the sand seized shall not, for any reason be released to any person and the same shall be subjected to confiscation under sub-section (4).

(3) Where a report under sub-section (1) is received before a Sub Divisional Magistrate, a notice requiring to submit in writing within the stipulated time as stated in the notice, to show cause the

reasons, if any, why the property seized under section 23 shall not be confiscated, shall be issued to the owner of, or the person having control of, the vehicle, tool, implements, loading equipment, or other article.

(4) Where the owner of the properties seized or the person having control of the same do not give explanation or the explanation given is not satisfactory, and the Sub Divisional Magistrate is satisfied that the properties seized under section 23 have to be confiscated, he shall, by an order, confiscate the same and the fact shall be informed to its owner or the person having its control:

Provided that the owner of the properties seized or the person having its control shall be given the liberty to reclaim it in lieu of the properties confiscated, except sand, by remitting an amount equal to the value of the confiscated articles, as fixed by the Collector.

Provided further that the sand confiscated shall not for any reason, be released by realising the value.

(5) The amount received under sub-section (4) shall, subject to the provisions of section 23D, be remitted to the River Management Fund.

(6) The sand confiscated under sub-section (4) shall be sold to Nirmithi Kendra or to 'Kalavara' at such rate, as may be fixed by the Public Works Department from time to time and such amount shall be remitted to the River Management Fund.

(7) The confiscation under this section shall be in addition to the penalty provided for the offence under this Act."

8. Section 23A of the Act deals with release of the vehicle which has been seized and the procedure to be followed after seizure. Proviso to Sub Section 2 of Section 23A of the Act deals with the power of the Magistrate in such cases which says that it can be released to the person on sufficient security and such release or disposal will be only till the completion of the confiscation proceedings under this Act. So a discretion has been given to the Magistrate to fix the security to be furnished while

considering the question of granting interim custody of the vehicle which has been seized under this Act.

9. Though such a discretion has been given, that has to be exercised judiciously. So considering the legislative intention this Court feels that the condition imposed by the Court below appears to be harsh and the same can be modified by showing some leniency in fixing the security to be furnished. So the condition Nos.2 and 3 imposed by the Court below are set aside and the same is modified as follows:-

The petitioner shall deposit ₹.1,00,000/-(ie., ₹.10,00,000X10%) of the amount assessed on the value of the vehicle before the Court below and execute the bond for the balance amount ie., ₹.9,00,000/- (90% of the value of the vehicle) with two solvent sureties for the like sum each to the satisfaction of the Judicial First Class Magistrate Court, No-I, Kasaragod.

The above release of the vehicle will be subject to the completion of the confiscation proceedings if any to be initiated under this Act as provided under proviso to Section 23A (2) of the Sand Act. The petitioner shall file an undertaking that he will not alienate or encumber or make any modification in the vehicle without getting prior permission from the Judicial First Class Magistrate Court, No-I, Kasaragod till the confiscation proceedings are completed. The other conditions imposed by the court below will

remain as such.

With the above modification of the condition imposed the petition is disposed of. Office is directed to communicate this order to the concerned Court immediately.

sd/-

K.RAMAKRISHNAN, JUDGE.

R.AV