



2025:KER:89449

CRL.MC NO. 9009 OF 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 21ST DAY OF NOVEMBER 2025 / 30TH KARTHIKA, 1947

CRL.MC NO. 9009 OF 2025

CRIME NO.3/2025 OF Mukkuzhy Forest Station, Pathanamthitta

AGAINST THE ORDER/JUDGMENT DATED 01.04.2025 IN CRMP
NO.1020 OF 2025 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,
KANJIRAPPALLY

PETITIONER:

SHIJO MON JOSEPH
AGED 45 YEARS
S/O JOSEPH, ARACKAL (H), MUKKOOTTUTHARA P.O,
KOLLAMULA, PATHANAMTHITTA, PIN - 686510

BY ADVS.
SHRI.SAHAL SHAJAHAN
SRI.SHAJAHAN P.M.

RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM,, PIN - 682031
- 2 THE DEPUTY RANGE FOREST OFFICER,
MUKKUZHY FOREST STATION, PAMPA RANGE,
PATHANAMTHITTA, PIN - 685510



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SPECIAL PUBLIC PROSECUTOR SRI. NAGARAJ NARAYANAN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21.11.2025, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

**“C.R”****ORDER****Dated this the 21st day of November 2025**

The petitioner is the registered owner of a lorry bearing registration No. KL-33-9772. The vehicle was seized by the Deputy Range Forest Officer, Mukkuzhy Forest Station, Pathanamthitta, on the allegation that the vehicle was used for transporting river sand from the forest in violation of Sections 27(1) (e) (iv) & (v) and 52(1) of the Kerala Forest Act, 1961. To obtain the interim custody of the vehicle, the petitioner filed a petition before the Court of the Judicial First-Class Magistrate-II, Kanjirappally, under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, ‘BNSS’). By Annexure B order, the learned Magistrate granted interim custody of the vehicle, but subject to the condition that the petitioner furnishes a bank guarantee for Rs.3,00,000/-, being the assessed



value of the vehicle. It is aggrieved by the said condition that this Criminal Miscellaneous Case is filed. The petitioner contends that the above condition is onerous in view of the law laid down by the Hon'ble Supreme Court in **Shihab etc. and another v. State of Kerala and another**¹ and this Court in **Muhamed Ali v. State of Kerala and Others**².

2. I have heard Sri. Sahal Shajahan, the learned counsel for the petitioner and Sri. Nagaraj Narayanan, the learned Special Public Prosecutor.

3. The learned counsel for the petitioner contends that, in **Shihab's case**¹, the Hon'ble Supreme Court has considered an identical issue, where the seized vehicle was used for transporting river sand from the forest. After examining the scope of Section 53 of the Kerala Forest Act, it has been held that the

¹[2016 (4) KHC 183]

²[2025 Supreme (Online) (Ker) 39722]



condition of furnishing a bank guarantee for the granting of the interim custody of a vehicle is onerous. Reliance is also placed on the decision of this Court in **State of Kerala v. Thomas K.B³** , wherein this Court has distinguished the decision of the Hon'ble Supreme Court in **State of Karnataka v. K. Krishnan⁴** and has held that ratio in **Shihab's case¹** governs cases of the instant nature in light of Section 53 of the Kerala Forest Act.

4. On the contrary, the learned Special Public Prosecutor opposes the Crl. M.C. He contends that this Court in **Raju Augustine and Another v. Divisional Forest Officer and Others⁵** has harmonised **Shihab¹** and **Krishnan's⁴** cases, and has held that **Krishnan's⁴** case governs the field. He also places reliance on another decision of this Court in **Vinodkumar v. State of Kerala⁶** ,

3 [2018 (1) KHC 634]

4 [2000 KHC 1315]

5[2017(5) KHC 344]

6 [2024 KHC 1537]



which has followed the principles in **Krishnan's case**⁴.

5. In reply, the learned counsel for the petitioner points out that **Krishnan's case**⁴ was decided in the context of Section 63 of the Karnataka Forest Act, which expressly mandates the furnishing of a bank guarantee for its release. The Kerala Forest Act does not contain an analogous provision. Furthermore, as the present vehicle was allegedly found transporting sand, it is not liable to be confiscated because sand does not fall within the articles listed in Section 61A of the Kerala Forest Act. It is only when the confiscation proceedings are envisaged that the necessity of furnishing a bank guarantee arises.

6. Section 53 of the Kerala Forest Act reads as follows:

“Section 53 Power to release property seized under Section 52.—

Any Forest Officer of a rank not inferior to that of a Ranger, who or whose subordinate has seized any tools, boats, vehicles or cattle under the provisions of Section 52, may release the same on the execution by the owner thereof a bond for the production of the



property so released, if and when so required before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made”.

7. It is also necessary to refer to Section 61A of the Kerala Forest Act, which reads as follows:

“Section 61A [Confiscation by Forest Officers in certain cases— Notwithstanding anything contained in the foregoing provisions of this chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.]

8. Section 61A of the Kerala Forest Act unambiguously contemplates confiscation of the tools, ropes, chains, boats, vehicles, cattle used for committing a forest offence in respect of timber, charcoal, firewood or ivory.



9. In the present case, it is undisputed that the alleged good that was transported was sand, which does not fall within the foul of Section 61A of the Kerala Forest Act. Therefore, the vehicle is not liable to be confiscated. Furthermore, under Section 53 of the Kerala Forest Act, the competent officer is empowered to release the vehicle on execution of a bond.

10. Here it is pertinent to state, at the cost of repetition, that in **Krishnan's case**⁴, the Hon'ble Supreme Court was considering the question of releasing a vehicle that was used for the transportation of timber in contravention of the provisions of the Karnataka Forest Act. In the said Act, Section 63 – inserted by Act 12 of 1998, w.e.f., 11.05.1998 – specifically mandates the Forest Ranger to grant interim custody of the vehicle involved in a forest offence only on furnishing of a bank guarantee. The said section was inserted prior to the decision in **Krishnan's case**⁴, and it



reads as follows:

“63. Power to release property seized under section 62.— Any Forest Officer of a rank not inferior to that of a Forest Ranger who, or whose subordinate, has seized any tools, boats, vehicles or cattle '[under section 62 may, subject to section 71G release] the same on, [production of a Bank guarantee equal to the value as estimated by such officer (which shall be renewable from time to time till the final disposal of the criminal proceedings instituted in respect of the alleged offence) and on]² the execution by the owner thereof of a bond for the production of the property so released if and when so required before the magistrate having jurisdiction to try the offence on account of which the seizure had been made.

11. Admittedly, there is no analogous provision in the Kerala Forest Act.

12. **Shihab's case**¹ was rendered after **Krishnan's case**⁴, but in a matter arising under the Kerala Forest Act. The Hon'ble Supreme Court, on considering that the goods involved in the former case was sand and that Section 53 empowered the Ranger to release the vehicle on interim custody on bond, held that the condition to furnish a bank guarantee was onerous. The same view has been taken in **Thomas's case**³, following the ratio in **Shihab's case**¹. The decisions in **Raju Augustine**⁵ and



Vinod Kumar's cases⁶ were rendered in the peculiar facts and circumstances of the said cases, but without considering the subtle distinction of the facts and the law involved in **Shihab's**¹ and **Krishnan's cases**⁴, which related to the Kerala Forest Act and the Karnataka Forest Act, respectively.

13. In the present case, as the vehicle was used for allegedly transporting sand and Section 53 of the Kerala Forest Act empowers the competent officer to grant interim custody of the vehicle on the owner executing a bond, I am convinced that the impugned condition to furnish a bank guarantee is onerous and unjustifiable. In such cases, the decision in **Shihab's case**¹ rules the roost.

14. For the foregoing reasons, I hold that the condition directing the petitioner to furnish a bank guarantee to release his vehicle on interim custody is onerous, and is liable to be interfered with by exercising



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the inherent powers of this Court under Section 528 of the BNSS.

Accordingly, the Crl. M.C. is allowed. The condition No.1 in Annexure B order is set aside. The 2nd respondent is ordered to grant interim custody of the vehicle to the petitioner, in accordance with law and as expeditiously as possible, subject to the petitioner complying with conditions Nos. 2 to 8 in Annexure B order.

Sd/-

C.S.DIAS, JUDGE

rmm 21 /11/2025



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APPENDIX OF CRL.MC 9009/2025

PETITIONER ANNEXURES

Annexure A	A TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
Annexure B	THE CERTIFIED COPY OF THE ORDER PASSED BY THE HON'BLE COURT BELOW DATED 01.04.2025