

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.MC.No. 864 of 2015 ()

CC 1920/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,HOSDRUG

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PETITIONERS/ACCUSED No.1 & 2:

- 1. SASI V.P., AGED 45 YEARS
S/O.KANNAN, VISMAYA HOUSE
KOOTHUPARAMBU
KANNUR DISTRICT.**
- 2. ROJITH N., AGED 40 YEARS
ROSHINI HOUSE, NEERVELI P.O.
KANNUR DISTRICT.**

BY ADV. SRI.I.V.PRAMOD

RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031.**
- 2. SUB INSPECTOR OF POLICE
HOSDURG POLICE STATION, KASARGOD DISTRICT.**

R1 BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 11-02-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

Crl.MC.No. 864 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE A1. COPY OF THE COMPLAINT/FINAL REPORT FILED BY THE 2ND
RESPONDENT BEFORE THE JFCM 1 HOSDURG DATED 2.6.14.**

**ANNEXURE A2. COPY OF THE PROCEEDINGS OF SUB COLLECTOR, KANJANHAD
DATED 07.08.14.**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY // P.A. TO JUDGE

SD

P. UBAID, J.

Crl.M.C.No.864 of 2015

Dated this the 11th day of February, 2015

O R D E R

A vehicle in the possession of the petitioners, with a load of sand, was seized by the police, on the allegation that river sand was transported in the vehicle. Accordingly, the police registered a crime against the petitioners under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. (for short, 'the Sand Act'). During investigation it was revealed that the property is not river sand. The matter was reported to the Sub Divisional Magistrate, Kasaragod. Finding that it is not river sand at all, the Sub Divisional Magistrate released the vehicle to the petitioners. However, by the time the Sub Inspector submitted a final report against the petitioners in court under Sections 20 and 21 of the Sand Act. Cognizance was taken as C.C.1920/2014. The said prosecution is sought to be quashed. No doubt, the prosecution will have to be quashed, because the property involved is admittedly not river sand. Even otherwise, the prosecution will have to be quashed. The provisions of the

Sand Act prohibit cognizance except on a complaint in writing made by the authorised officer. The police cannot bring prosecution under the Sand Act by way of final report under Section 173(2) Cr.P.C. If Sub Inspector is the authorised officer, he will have to file a proper complaint as meant under the law. If there is no proper complaint, the proceeding will have to be closed. Any way, the property is not river sand, and the petitioners cannot be prosecuted under the Sand Act.

In the result, this petition is allowed. The prosecution against the petitioners in C.C.1920/2014 of the Judicial First Class Magistrate Court, Hosdurg, will stand quashed under Section 482 Cr.P.C. Accordingly, the petitioners will stand released from prosecution, and the bail bond, if any, executed by them will stand discharged.

Sd/-

P. UBAID, JUDGE

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