

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

Crl.MC.No. 1138 of 2015

C.C.NO.2265/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDRUG

PETITIONER(S)/ACCUSED NO.1 & 2 :

- 1. DEVA, AGED 39 YEARS,
S/O.MARIMUTHU, ERODE, PERUMDURAI,
TAMILNADU.**
- 2. JOHN VICTOR.P, AGED 34 YEARS,
S/O.PONNAIYYAN, VADAKKEKUTTIVILAYIL HOUSE,
KILLITHOOVAYIL.P.O, VILAVAMCODE, KANAYAKUMARI,
TAMILNADU.**

**BY ADVS.SRI.I.V.PRAMOD
SRI.S.U.NAZAR**

RESPONDENT(S)/STATE AND ACCUSED :

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. K.V.SURENDRAN,
ADDITIONAL SUB INSPECTOR OF POLICE,
HOSDURG POLICE STATION, KASARAGOD DISTRICT-671 101.**

R1 BY PUBLIC PROSECUTOR SRI.R.GITHESH

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 29-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE A1: CERTIFIED COPY OF THE COMPLAINT/FINAL REPORT IN
C.C.NO.2265/2014 BEFORE THE JFCM-I, HOSDURG
DATED 09.07.2014.**

**ANNEXURE A2: A TRUE COPY OF THE PROCEEDINGS OF SUB DIVISIONAL
MAGISTRATE, KASARAGOD AT KANHANGAD
DATED 28.05.2014.**

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 1138 of 2015

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Dated this the 29th day of July, 2015

ORDER

The petitioners herein are the accused in C.C.No.2265/2014 on the file of the Judicial First Class Magistrate's Court-1, Hosdurg, Kasargod district. The 1st petitioner is the driver and the 2nd petitioner is the owner of the lorry bearing registration No.TN-74-U-8001, which was intercepted by the Hosdurg Police on 15.3.2014 on the allegation that it was unlawfully transporting river sand. Accordingly, the FIR leading to the Crime No.343/2014 of Hosdurg Police Station was registered for offences under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The Police had also forwarded the documents to the Sub Divisional Magistrate, Kasargod at Kanhangad, for adjudication. The Sub Divisional Magistrate in exercise of the powers under the aforesated Act conducted adjudication and passed Anx.A-2 order dated 28.5.2014 holding that the contention of the petitioners that the vehicle contained only the sand mixed with mortar cement products from Karnataka after

paying proper tax at both check posts in Kerala and Karnataka, etc. is correct and that therefore the offences under the aforestated River Sand Act are not attracted in the facts of the case and the Sub Divisional Magistrate in Anx. A-2 order conclusively held that the seized vehicle had crossed Manjeshwar sales tax check post after paying tax and that the vehicle does not contain any river sand taken from Kerala and that hence the provisions contained in the aforestated River Sand Act are not attracted in this case and also held that the party had valid bills for transporting the mortar cement products. Accordingly, the Sub Divisional Magistrate had ordered release of the seized vehicle along with the goods to the registered owner of the vehicle, as per Anx.A-2. It is in the light of these aspects that the petitioners seek the prayer for quashment of the impugned Anx.A-1 complaint in Calendar Case, C.C.No.2265/2014 on the file of the Judicial First Class Magistrate's Court-I, Hosdurg in respect of the above said impugned criminal proceedings.

2. This Court as per the judgment dated 11.2.2015 in Crl.M.C.No.864/2015 has allowed the prayer for quashment in a similar case, where the Sub Divisional Magistrate had held that the seized article is not river sand and had accordingly released the

vehicle to the accused therein in the said adjudication proceedings conducted in that case. Accordingly, in the light of fact that the competent adjudicating authority has conclusively found as per Anx.A-2 order that the seized article is not river sand from the State of Kerala, but is mortar mixed products, purchased from Karnataka, for which there are valid bills for transporting the motor cements products, for which due tax has already been paid on crossing the sales tax check post at Manjeshwar, etc., it is only to be held that the offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 will not lie in the facts of this case. Accordingly, it is ordered in the interest of justice that the impugned Anx. A-1 complaint in C.C.No.2265/2014 on the file of the Judicial First Class Magistrate's Court-I, Hosdurg, pending against the petitioners and all further proceedings arising therefrom pending against the petitioners are quashed.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge

