

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 1572 of 2015

PETITIONER(S):

1. ABDUL KABEER, AGED 41 YEARS,
S/O. KASALI, CHAKKEKEEL HOUSE, KAVARATTI ISLAND,
UT OF LAKSHADWEEP.

ADDL.R2

THE CHIEF WILDLIFE WARDEN,
DEPARTMENT OF FOREST AND WILDLIFE,
KAVARATHI, U.T. OF LAKSHADWEEP
(Impleaded as per order dated 9.7.2015 Crl.M.A 6567/15)

BY ADV. SRI.BABU S. NAIR

RESPONDENT(S):

THE UNION TERRITORY LAKSHADWEEP,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-682031 - FOR THE SUB INSPEXTOR OF POLICE
KAVARATTI POLICE STATION, UT OF LAKSHADWEEP
PIN-682555

BY SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CrI.MC.No. 1572 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE A: TRUE COPY OF THE PROPERTY SEIZURE MEMO ISSUED BY THE
SUB INSPECTOR OF POLICE, KAVARATTI POLICE STATION DATED 1.9.2014

TRUE COPY

P.S TO JUDGE

RAJA VIJAYARAGHAVAN.V. J

Crl.M.C.1572 of 2015

Dated 20th August, 2015

ORDER

1. This petition is filed by the petitioner seeking release of his vehicle bearing registration No.LD-01-7619 (KL 17-7033) in interim custody.

2. It appears from the records that on 1.9.2014 at 11.20 pm, information was received by the officer in charge of the Kavarathy police station that certain unidentified persons were loading bulk quantity of corals and shingle stones in a truck near the eastern side of ATHA Park near to Helipad behind solar power plant, Kavarathi Island. On the strength of this information, Inspector of police deputed Sub Inspector of police to enquire with regard to the information. It was revealed that 96 bags full of

shingle and coral stones were loaded in a lorry bearing registration No.KL 17-7033. Inspection of the papers revealed that the vehicle was owned by the petitioner. Interrogation further revealed that the corals and shingles were being transported by the petitioner to the house of his friend. The Sub Inspector seized the vehicle and 96 bags of coral stones and shingles. The seized items were forwarded to the Conservator of Forest, Department of Environment and Forest, Kavaratti, Lakshadweep for further action. Later, a crime was registered u/s 56 of the Wild Life (Protection) Act.

3. According to the petitioner, the vehicle along with the materials were seized by the police as early as on 1.9.2014. The said vehicle being a mini lorry, is lying in the precincts of the police station and the petitioner could not get the vehicle released u/s 451

of the Code of Criminal Procedure as the Presiding Officer in the Judicial Magistrate of First Class Court, Androth was on leave. It is in the said circumstances that the instant petition was filed seeking interim release of the vehicle.

4. As per order dated 6.7.2015, the petitioner was directed to implead the Wild Life Department of the Union Territory of Lakshadweep Administration. Sri.S.Radhakrishnan, the learned Standing Counsel for the Lakshadweep Administration was directed to obtain instructions in respect of the plea of the petitioner that coral shingles is not a restricted article within the scope of the Wild Life (Protection) Act. Based on the above directions, an affidavit has been filed by the additional 2nd respondent on 18.8.2015. In the affidavit, it has been submitted that a complaint has already been preferred by the

Department, Environment and Forest, before the JFCM, Androth, and the same was pending before the said Court as CR.M.P 240 of 2014. It is further submitted that it is advisable for the petitioner to approach the trial Court for getting the vehicle released.

5. The learned counsel appearing for the petitioner submitted that the matter has been pending before this Court as early as from 11.3.2015. It is submitted that the vehicle was seized as early as on 1.9.2014 and directing the petitioner to approach the learned Magistrate for further orders will result in great hardship.

6. I have heard the learned counsel appearing for the petitioner, the learned Public Prosecutor and also the learned Standing Counsel appearing for the 2nd

respondent .

7. The learned counsel appearing for the petitioner has relied on the judgement of the Apex Court in **Sunderbhai Ambalal Desai and C.M.Mudaliar v. State of Gujarat, (AIR 2003 SC 638)** to highlight the scope of invoking s.451 of the Code of Criminal Procedure in respect of vehicles . It was observed as follows in the said case.

“The powers u/s 451 Cr.P.C should be exercised expeditiously and judiciously. It would serve various purposes, namely:

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation:*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail, and*
- 4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering*

with the articles.

It was also directed that the learned Magistrates before whom the matters are placed are to pass orders expeditiously so that the articles or vehicles are not retained in the police station for a long time

8. I take note of the fact that the vehicle was seized as early as on 1.9.2014 and is lying exposed to the vagaries of nature . The learned counsel has contented that he is prepared to abide by any condition that may be imposed. In view of the Judgement of the Apex Court in **Sunderbhai** (supra), no serious objection was raised by the Prosecutor or the counsel appearing for the ^{1st} respondent, who appears for the Union Territory of Lakshadweep Administration. Since the possibility of the vehicle getting damaged and rendered useless when kept idle cannot be ruled out, I am inclined to allow the request of the petitioner but on stringent conditions so that the vehicle is made available as and when

required by the Court or other appropriate authority and use of the vehicle for similar purposes is excluded.

9. In the result, the vehicle bearing registration No.LD-01-7619 (main land registration No. is KL 17-7033) shall be released to the petitioner subject to his complying with the following conditions:

(i). Petitioner shall produce before the learned magistrate the documents of ownership/registration revealing that the petitioner is the owner of the vehicle which has been seized by the Station House Officer Kavarathi police station on 1.9.2014 pending before the JFMC, Androth, as CR.M.P.240 of 2014.

(ii). Chief Wild Life Warden, Kavarathy shall assess the value of the vehicle and the petitioner shall produce Bank

Guarantee for the said value before the learned Magistrate, Androth.

(iii). The vehicle shall not be dismantled or disposed of in any manner whatsoever, until culmination of the proceeding before the Court or other appropriate authority, as the case may be.

(iv). Petitioner shall produce photographs of the vehicle attested by him showing the registration number of the vehicle and produce the same before the learned Magistrate.

(v). The vehicle shall not be used for commission of any offence during the period the bond remains in force. If any case is registered by any authority for alleged use of the vehicle for any offence whatsoever, that will be sufficient enough reason to cancel the bond executed by the petitioner and to take custody of the vehicle.

(vi). Petitioner shall execute a bond to the satisfaction of the learned Magistrate undertaking to produce the vehicle as and when directed by the Court or any other authority as the case may be in the course of investigation or trial or other proceedings, undertaking to comply with the conditions mentioned above and that in case the vehicle is lost, damaged, dismantled or otherwise disposed of while in the custody of the petitioner or that for any reason whatsoever, he failed to produce the vehicle, the Investigating Officer, Court or other authority, value of the vehicle as assessed by the appropriate authority, shall be recovered from the bank guarantee.

Crl.M.C is disposed of with the above directions.

Sd/-
RAJA VIJAYARAGHAVAN.V.
Judge

Mrcs

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