

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

Crl.MC.No. 2138 of 2015

**CC 1005/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.
CRIME NO. 335/2011 OF KALADY POLICE STATION, ERNAKULAM.**
.....

PETITIONER(S)/PETITIONER/ACCUSED:

**AFSAL, AGED 24 YEARS, S/O.RASHEED,
THARAYIL HOUSE, SREEBHOTHAPURAM BHGAM,
SREEMOOLANAGARAM KARA, CHOWWARA,
THEKKUM BHAGAM VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.K.SUNILKUMAR
SMT.K.J.GISHA**

RESPONDENT/COMPLAINANT:

**THE STATE OF KERALA,
THROUGH THE SUB INSPECTOR OF POLICE,
KALADY POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 10-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

Crl.MC.No. 2138 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE AI: CERTIFIED COPY OF THE FINAL REPORT IN C.C.NO.1005/14 ON
THE FILE OF THE JUDICIAL FIRST CLASS MAGISTTRATE
COURT, KALADY.**

RESPONDENT(S)' ANNEXURES:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

ALEXANDER THOMAS, J.

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Crl.M.C.No.2138 of 2015

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Dated this the 10th day of June, 2015

O R D E R

The prayer in this Crl.M.C. is as follows:

“.....to quash the entire proceedings in C.C.No.1005/2014 on the file of the Judicial First Class Magistrate Court, Kalady arising out of Crime No.335/2011 of Kalady Police Station, in the interest of justice.”

The petitioner is the sole accused in C.C.No.1005/2014 on the file of the Judicial First Class Magistrate Court, Kalady for the offences under Section 279 of IPC and Sections 23 r/w 20 and 27 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short the Act). The case was initiated on the basis of the crime registered by the Sub Inspector of kalady in that regard. The gist of the prosecution case is that on 20/04/2011 at about 11 a.m., while the Sub Inspector of Kalady Police Station on patrol duty had seen the accused transporting river sand in mini lorry bearing Registration No.KL-7/L-1805 through Aramkavu-

Madathikadavu-Kanjoor road in a rash and negligent manner. When the police party tried to intercept the vehicle, the petitioner/accused did not stop the vehicle and thereby committed offences punishable under 279 of IPC and Sections 23 r/w 20 and 27 of the Act. It is also alleged that the petitioner had transported the river sand without authorised licence. It is stated that the petitioner was arrested and released on bail. The police after investigation submitted the impugned Annexure A1 final report/charge sheet in the above said crime which led to the pendency of C.C.No. 1005/2014 on the file of the above said Jurisdictional Magistrate's Court concerned.

2. It is contended that in the light of the decision of this Court in Ismayil v. State of Kerala reported in 2010(3) KLT 706, the Criminal Court cannot take cognizance on a final report/charge sheet filed by the police under Section 173(2) of the Cr.P.C as Section 25 of the Sand Act mandates that an authorised officer who is empowered to file a complaint that the court can take cognizance only on a complaint instituted by an authorised officer. That such notification authorising the Sub Inspector of Police, was not in

existence as on the date of occurrence of the alleged offence viz, 20/04/2011 and that it is only much later the notification in that regard was issued authorizing officers including Sub Inspector of Police concerned. Therefore it is contended that taking of cognizance of the present case on the basis of Annexure-1 final report/charge sheet cannot be justified and the entire impugned criminal proceedings initiated and pending against the petitioner is liable to be interdicted by this Court.

3. Heard, Sri.K.Sunil Kumar, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala. It is indisputable that the date of occurrence of the alleged offence is on 20/04/2011 on which date there was no notification authorising an officer of the rank of Sub Inspector of Police to institute even a complaint. It is only thereafter that by Amendment Act 15 of 2013 made effective from 25/11/2012 (published in Kerala Gazette Ext.No.693 dated 07/03/2013) that amendment to Section 25 of the Act was made. Prior to the said amendment of Section 25 of the Act reads as follows:

“25. Cognizance of offences– No Court shall take cognizance of any offence punishable under this Act,

except upon a complaint in writing made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology.”

After the amendment, Section 25 reads as follows:

“25.Cognizance of offences–(1) The Court having jurisdiction may, upon a written complaint by an officer referred to in Section 23 or of a Geologist of the Mining and Geology Department or upon a police report under sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), constituting an offence under this Act, take cognizance of such offence.

(2) Where an officer referred to under sub-section (1) is satisfied that an offence under this Act has been committed, he shall, as soon as may be, file a complaint relating to that, before the Magistrate Court having jurisdiction.”

4. In this view of the matter it cannot be doubted that the impugned criminal proceedings are ultra vires and unenforceable in the light of the provisions of section 25 as it stood prior to the amendment. The law that stood as on the date of the alleged commission of the offence is the law that is to govern the matter.

5. Accordingly the impugned Annexure A1 final report/charge sheet filed in Crime No. 335/2011 of Kalady Police Station which led to the institution of C.C.No.1005/2014 on the file of the Judicial First Class Magistrate Court, Kalady and all further proceedings

therefrom pending against the petitioner are quashed.

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

Sd/- ALEXANDER THOMAS, JUDGE

MJL

