

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.MC.No. 2294 of 2015 ()

CMP 127/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,KOYILANDY

PETITIONER :

**ROSHID, AGED 32 YEARS,S/O.POKKERKUTTY,
KUTTIYULLATHIL HOUSE, KARUVANNUR P.O.,
NADUVANNUR VIA, KOYILANDY TALUK,
REPRESENTED BY POWER OF ATTORNEY HOLDER,
PRADEESH P.K., S/O.GOPALAN
PADINHAREKUTTYULLATHIL HOUSE, KARUVANNUR P.O.,
NADUVANNUR VIA. KOYILANDY TALUK.**

**BY ADVS.SRI.K.M.FIROZ
SMT.M.SHAJNA
SRI.S.KANNAN**

RESPONDENTS/RESPONDENTS :

- 1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI -682 031.**
- 2. THE TAHSILDAR
TALUK OFFICE, KOYILANDI, KOZHIKODE - 673 305.**

R1 & R2 BY PUBLIC PROSECUTOR SMT. SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-06-2015, ALONG WITH CRMC. 2295/2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-A1: A TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER IN CMP NO.127/2015 BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY.

ANNEXURE-A2: A TRUE COPY OF THE ORDER DATED 24.2.2015 IN CMP NO.127/2015 PASSED BY THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOYILANDY.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Crl.M.C.No.2294 & 2295 of 2015

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Dated this the 23rd day of June, 2015

ORDER

The vehicles of the respective petitioners in these cases were seized by the 2nd respondent alleging commission of offence punishable under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The petitioners sought interim custody of the vehicles by making necessary application before the court below. In Crime No.2294/2105, the said request was rejected by the court below as per Anx.A-2 order dated 24.4.2021 in C.M.P.No.127/2015 and the said request in Crl.M.C.No. 2295/2015 was rejected by the court below as per order dated 24.4.2015 in C.M.P.No.125/2015.

2. The impugned rejection order was passed on the ground that the seizure of the vehicles has not been reported to the court below by the Police and that it is under the custody of the Revenue Department, where the proceedings are pending, and hence the respective petitions are accordingly, dismissed.

3. Heard both sides.

4. This Court has passed a common order dated 8.4.2015

in both these Crl.M.Cs., which reads as follows:

“The learned Public Prosecutor takes notice for the State. The offence involved is under the Kerala Protection of River Banks (Protection and Regulation of removal of sand) Act. The right authority to release property under Section 451 Cr.P.C is the Judicial Magistrate having jurisdiction over the area. The Executive Authority can only initiate confiscation proceedings. The request for interim custody of the vehicle was disallowed on the ground that the seizure is not reported. The Station House Officer will report whether the fact of seizure is reported to the court, and if not so far reported, he will immediately report the fact of seizure to the concerned court and submit report.”

5. It has been held by this Court in the case Kumkuma Priya v. State of Kerala, reported in 2015 (2) KLT 438 that the Station House Officer, who has seized the vehicle in question is legally bound to report the factum of seizure to the jurisdictional Magistrate concerned. It has been held by this Court in paragraphs 2 and 3 in the above said ruling as follows:

“2. The learned counsel for the petitioner raised a serious question that Sub Divisional Magistrate has no power under the law to order interim custody of the vehicle seized under the Sand Act, and such power can be exercised only by the Judicial First Class Magistrate having jurisdiction over the area, under Section 451 Cr.P.C. The matter is covered by Section 23A of the Sand Act. This provision will indicate that the power of the Sub Divisional Magistrate as regards the property is seized under the Sand Act is only to order confiscation under Sub Section 4. Sub Section 1 of Section 23 A provides that where any property is seized under Section 23, the officer seizing such property shall, within 48 hours of such seizure, make a report of such seizure before the Judicial Magistrate having jurisdiction and also before the Sub Divisional Magistrate having jurisdiction over the area, whether prosecution proceedings have

been initiated or not. The last part of Sub Section 1 provides that if seizure is made by any officer other than a police officer the fact of seizure shall be reported to the Station House Officer of the Police Station having jurisdiction over the area, and on getting such report the police officer shall take steps under Section 102 of the Code of Criminal Procedure. Thus the provision is very clear that when the fact of seizure is reported to the Police Station under Section 23A (1) of the Sand Act, or even when such seizure is made by the police officer having powers under the law, the police officer will have to take necessary steps under Section 102 Cr.P.C. This means that the fact of seizure will have to be reported to the Judicial Magistrate having jurisdiction, and if possible the property should be produced before the Judicial Magistrate. The law nowhere provides that the property shall be produced before the Sub Divisional Magistrate.

3. Sub Section 2 to Section 23A of the Sand Act provides that where a report of seizure is received under Sub Section 1 by a Judicial Magistrate having jurisdiction, steps there on, not contrary to the provisions of the Sand Act, shall be taken by the Judicial Magistrate as per the provisions of the Code of Criminal Procedure. It is further provided that if there is a claim for the property for interim custody, the Judicial Magistrate can release the property to the right person on appropriate conditions, and if there is no such claim, or if the claim is not satisfactory, the property shall be subject to confiscation under Sub Section 4. Thus it is very clear power to release the property in interim custody under Section 451 Cr.P.C or under Section 457 Cr.P.C., as regards any property other than sand, is vested in the Judicial First Class Magistrate Court having jurisdiction, and not the Sub Divisional Magistrate, though there is provision that seizure shall be reported to the Sub Divisional Magistrate also. The purpose of such a provision, that seizure shall be reported to Sub Divisional Magistrate also, is only to enable the Sub Divisional Magistrate to initiate confiscation proceedings under Sub Section 4. He cannot in any circumstance release the property, or grant interim custody under Section 451 Cr.P.C. because such powers can be exercised only by a Judicial Magistrate."

6. Accordingly, it is ordered in the interest of justice as follows:

The Station House Officer concerned shall ensure that the factum of seizure is reported to the jurisdictional Magistrate's court concerned in full compliance with the earlier order dated 8.4.2015.

If such report has not so far been made by the S.H.O. concerned despite this Court's earlier order dated 8.4.2015, then the S.H.O. shall ensure that such report is made in these cases forthwith, at any rate, within a period of two days from the date of production of a copy of this order. The Station House Officer shall inform the respective petitioners by letter in writing as to when he has reported the factum of seizure of these vehicles to the jurisdictional Magistrate concerned. This shall be done within a period of five days from the date of receipt of a certified copy of this order. Accordingly, the impugned Anx.A-2 orders in both these two cases are quashed and Crl.M.P.No.127/2015 in Crl.M.C.No.2294/2105 and Crl.M.P.No.125/2015 in Crl.M.C.No.2295/2015 are remitted back to the court below for consideration afresh and passing of appropriate orders. The Public Prosecutor attached to the court below concerned shall ensure that the said report is made available to the court below. After hearing the petitioners through their counsel, if any, and the learned Public Prosecutor concerned, the court below will pass appropriate orders on the request for grant of interim custody of the vehicles in question within two weeks from the date of production of a certified copy of this order, in

accordance with law. This will be without prejudice to any other proceedings that may be initiated against the petitioners.

With these observations and directions, the CrI.M.Cs. stand finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE
sdk+
///True copy///

P.S. to Judge