

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Crl.MC.No. 2775 of 2015

**CC 3342/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, HOSDRUG
CRIME NO. 1081/2014 OF HOSDURG POLICE STATION , KASARGOD**
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PETITIONER(S)/ACCUSED NO.2:

**MUHAMMED RAFEEQ M.A., AGED 37 YEARS,
S/O.M.K.ABDUL KHADER, R/AT MARA HOUSE, SANTHOSH NAGAR,
P.O.CHENGALA, KASARAGOD TALUK.**

BY ADV. SMT.R.PADMAKUMARI

RESPONDENT(S)/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**
- 2. THE SUB INSPECTOR OF POLICE,
HOSDURG POLICE STATION, KANHANGAD,
KASARAGOD DISTRICT - 671 121.**

BY PUBLIC PROSECUTOR SRI.N.SURESH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
13-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNX.A1 - THE TRUE COPY OF THE FIR IN CRIME NO.1081/2014 OF HOSDURG POLICE STATION.

ANNX.A2 - THE CERTIFIED COPY OF THE CHARGE SHEET IN CC 3342/2014 ON THE FILES OF HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, HOSDURG.

ANNX.A3 - THE TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER LORRY KL-02-AD-8385.

ANNX.A4 - THE TRUE COPY OF THE GOODS CARRIAGE PERMIT ISSUED TO THE TIPPER LORRY BEARING REGISTRATION NO. KL-02-AD-8385.

ANNX.A5 - THE TRUE COPY OF THE ACKNOWLEDGMENT ISSUED TO THE REQUEST.

ANNX.A6 - THE TRUE COPY OF THE RECEIPT ISSUED BY THE STATE BANK OF TRAVANCORE KASARAGOD.

ANNX.A7 - THE TRUE COPY OF THE VEHICLE PASS ISSUED TO TRANSPORT DRUDGED MATERIALS ON 13.10.2014

ANNX.A8 -THE TRUE COPY OF THE DAILY DREDGED MATERIAL SALE REGISTER WITH ABSTRACT.

ANNX.A9 - THE ORIGINAL OF THE ANALYTICAL REPORT DATED 6-2-2015 ISSUED BY THE SENIOR CHEMIST, CHEMICAL LAB, DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM, PATTOM PALACE P.O., THIRUVANANTHAPURAM.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msv/

ALEXANDER THOMAS, J.

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Dated this the 13th day of July, 2015.

ORDER

The petitioner is accused No.2 in the impugned Anx-A1 crime No.1081/2014 of Hosdurg Police Station for offences alleged under Secs.21 & 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The police after investigation submitted impugned Anx-A2 final report/charge sheet in Anx-A1 crime No.1081/2014 of Hosdurg Police Station which has led to the institution of C.C.No.3342/2014 on the file of the Judicial first Class Magistrate Court-I, Hosdurg. It is stated that the 2nd respondent-Sub Inspector of Police, Hosdurg Police Station has seized petitioner's tipper lorry bearing Reg.No.KL-02-AD-8385 alleging illegal transportation of river sand by accused No.1, who is the driver of the said vehicle. It is stated that the petitioner is the owner of the said vehicle who is having valid documents. That Anx-A7 vehicle pass was issued to transport the drudged materials in the aforestated petitioner's tipper lorry as per Sec.10(1) of the Indian Port Act and Rule 287(8) of the KPM Rules. That on 13.10.2014, when the drudged material in which sand was taken

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from the Port was transported from Mogralputhur to Pakkam at Pallikkara in the petitioner's vehicle, the same was seized by the 2nd respondent on the aforestated allegations. It is the case of the petitioner that his vehicle was used for taking drudged materials for which Anx-A7 vehicle pass was also issued by the competent authority concerned. The packets of sand already taken by the 2nd respondent as sample was sent for chemical examination and it is reported by the Directorate of Mining and Geology as per Anx-A9 report that the sand sample collected is identified as beach sand. That on a perusal of Anx-A9 it is clear that what was seized from the petitioner's vehicle was not river sand. The 2nd respondent seized the vehicle and registered the crime on the basis that the sand in question was river sand and that since it is conclusively identified as beach sand by Anx-A9 report, it is clearly disclosed that the accused has not committed any offence as alleged. Therefore, it is contended that the continuation of the impugned criminal proceedings is illegal and improper and it is an abuse of the process of the court and it is prayed that the entire criminal proceedings arising out of Anx-A2 final report/charge sheet in the crime which has led to the institution of C.C.No.3342/2014 on the file of the Judicial First Class Magistrate Court-I, Hosdurg and all further

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proceedings arising therefrom pending against the petitioner herein may be quashed.

2. Heard Smt.R.Padmakumari, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

3. The basic case of the prosecution in the impugned Anx-A2 final report filed in Anx-A1 Crime is that the sand in question found seized from the lorry belonging to the petitioner (A1) and driven by A2 was river sand and that transportation of such sand was without necessary permit mandated under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 and therefore it justifies impugned criminal proceedings taken for offences under Secs.21 & 21 of the aforestated Act. It is not disputed that by Anx-A9 report in respect of the sand sample pertaining to the impugned crime it has been categorically certified by the competent authority, Directorate of Mining and Geology that the sand sample submitted by the SHO, Hosdurg Police Station in Crime No.1081/2014 from the vehicle bearing Reg.No.KL-02-AD-8385 is identified as beach sand. The petitioner's very case is that these are sand which form part of the drudged materials taken from the Port for which relevant permit

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as per Anx-A7 has been secured from the competent authority as per KPM Rules. Be that as it may, it has been established beyond doubt that based on the chemical lab finding of the competent Mining and Geology Lab of the Government that the seized sand is beach sand and not river sand. Therefore, the prosecution case stands shattered and therefore, continuation of the further criminal proceedings at Anx-A2 will amount to abuse of the process of the court and will amount to wasting time and precious resources of the State authorities concerned and the judicial organs. In this view of the matter, impugned Anx-A2 final report/charge sheet filed in Anx-A1 Crime No.1081/2014 of Hosdurg Police Station which has led to the institution of C.C.No.3342/2014 on the file of the Judicial First Class Magistrate Court-I, Hosdurg, and all further proceedings arising therefrom pending against the petitioners herein stand quashed.

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

ALEXANDER THOMAS,
Judge.

bkn/-