

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

Crl.MC.No.3027 of 2015

**CMP NO.570/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
MUVATUPUZHA.
CRIME NO.782/2015 OF MUVATTUPUZHA POLICE STATION,ERNAKULAM.**

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PETITIONER:

**R.S.DEVELOPMENT AND CONSTRUCTIONS PVT. LTD,
BRAHMAPURAM P.O,KAKKANADU,
REPRESENTED BY AGMS ANNADURAI,
S/O.SAMUAL PANDIAN.**

BY ADV.SRI.PAUL K.VARGHESE

RESPONDENT'S:

- 1. STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
MUVATTUPUZHA,REPRESENTED THROUGH
PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA,
ERNAKULAM-682031.**
- 2. THE DISTRICT COLLECTOR,CIVIL STATION,
KAKKANAD,COCHIN - 682 030.**

**R1,R2 BY SRI.TOM JOSE PADINJAREKKARA (ADDITIONAL STATE
PUBLIC PROSECUTOR)**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE-I: A TRUE COPY OF THE ORDER IN CMP NO.570/15 OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT, MUVATTUPUZHA,
DATED 11.5.15.**

**ANNEXURE-II: A TRUE COPY OF THE RELEVANT PAGE OF THE KERALA
PETROLEUM PRODUCTS DEALER LICENSING ORDER 1981.**

**ANNEXURE-III: A TRUE COPY OF THE ORDER IN BAIL APPLICATION NO.5601/2014
OF THE HONOURABLE HIGH COURT OF KERALA DATED 6.8.2014.**

**ANNEXURE-IV: MOREOVER BITUMEN IS A PRODUCT DIRECTLY PURCHASED
FROM MARKET AND THE TENDER NOTICE FOR THE SAME OF
THE COCHIN REFINERIES LTD DATED 21.6.1999**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Dated this the 3rd day of June, 2015.

O R D E R

The matter under challenge is Annexure-1 order dated 11.5.2015 rendered in Crl.M.P.No.570/2015 passed by the Judicial First Class Magistrate Court, Muvattupuzha whereby the request of the petitioner herein for interim custody of the product "Bitumen VG 30" seized in connection with Crime No.782/2015 of Muvattupuzha Police Station was rejected by the court below. The said product was seized by the police in connection with the above said crime registered for offences under Sec.7 r/w 3 of the Essential Commodities Act (hereinafter referred to as 'the Act') and Sec. 407 r/w. 34 IPC.

2. Sri.Paul.K.Varghese, learned counsel for the petitioner, submits that offence under the provisions of the EC Act will not lie in the case as indisputably the Bitumen product seized is not a notified item under the EC Act or as per the Kerala Petroleum Products Dealers Licensing Order, 1981 framed by the Government of Kerala in exercise of the powers conferred under Secs.1, 2 & 3 of the EC Act and enabling

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provisions of Government Of Kerala in that regard. He points out that as per Rule 2(r) of the Kerala Petroleum Products Dealers Licensing Order, 1981 given at page 13 of paper book, "Petroleum Product" means motor spirit, high speed diesel oil, petroleum based lubricants and cooking gas. The learned counsel would contend that the product Bitumen is not in any way explicitly covered by the EC Act and only the Rule framed under the said Act relating to petroleum products is the Kerala Petroleum Products Dealers Licensing Order, 1981 and that only four specific items mentioned in Rule 2(r) thereof will come within the ambit of petroleum product namely, (1) motor spirit, (2) high speed diesel oil, (3) petroleum based lubricants and (4) cooking gas. As theseized Bitumen item does not come under Rule 2(r) of the Kerala Petroleum Products Dealers Licensing Order, it is prayed that the seized Bitumen may be ordered to be released to him at least on interim custody basis on any condition to safeguard the interest of prosecution.

3. The learned Public Prosecutor has filed a statement dated 29.5.2015 in this matter wherein it is inter alia stated that petroleum and its by-products are included in EC Act and Bitumen is the by-product of petroleum and the inclusion of the offence under the EC Act

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in the instant crime in respect of the seizure of the Bitumen product is justified in law.

4. Sri.Tom Jose Padinjarekkara, learned Additional State Public Prosecutor, would also further submit that the Government of India has issued order dated 16.4.1999 as GSR 272(E) published in the Gazette of India under the enabling powers conferred under Sec. 3 of the EC Act whereby Rule 2(g) thereof defines “petroleum products” as follows:

“Petroleum products” means crude oil or any product manufactured out of crude oil or from another petroleum product including Aviation Turbine Oil, Motor Spirit, High Speed Diesel, Liquefied Petroleum Gas, Superior Kerosene Oil, Naphtha and Solvent or any derivative.”

A copy of the said notification has been made available for perusal. On this basis the Additional State Public Prosecutor would contend that any derivative of any of the items mentioned in clause 2(a) of the aforementioned notification dated 16.4.1999 as GSR 272(E) published in the Gazette of India would come within the ambit of petroleum products as defined therein and therefore inclusion of the offence alleged under the provisions of EC Act is all the more justified in law.

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5. On a perusal of the impugned order and the materials on record it can be seen that both sides has proceeded on the basis as if the provisions under the EC Act are indeed applicable in the facts of this case and the court below was never called upon by either side to determine as to whether the seized Bitumen would come within the ambit of EC Act. Since that is the position, this Court is of the considered opinion that in a matter like this, it is not appropriate for this Court to adjudicate the matter at this stage, before the court below had an occasion to deal with this crucial aspects of the matter which is only raised for the first time in this CrI.M.C.

6. In this view of the matter, as the impugned order does not deal with that crucial aspect of the matter, it requires close scrutiny and determination by the court below as to whether the seized product would come within the ambit of EC Act.

7. Accordingly, impugned Annexure-AI order passed in CrI.M.P.No.570/2015 in Crime No.782/2015 is set aside. CrI.M.P.No.570/2015 stands remitted back to the court below for consideration afresh. The court below will consider the matter afresh and pass necessary orders thereon in accordance with law within a

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period of ten days from the date of production of a certified copy of this order after affording a reasonable opportunity of being heard to the affected parties. It is made clear that the whole issues are at large before the court below including the question as to whether Bitumen would come within the ambit of EC Act. Learned counsel for the petitioner relies on the decision of the Apex Court in State of M.P. and others v. Rameshwar Rathod reported in 1990(2) KLJ 775 (SC) and the decision of this Court in Chacko P.M. v. State of Kerala reported in 2012 (2) KHC 349. The petitioner is at liberty to rely on such reported decisions while urging his grounds before the court below and it is for the learned Magistrate to consider the applicability of those court rulings.

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

ALEXANDER THOMAS,
Judge.

bkn/-