

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.MC.No.3297 of 2015

**CMP NO.1037/2015 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
KASARAGOD.**

CRIME NO.287/2015 OF KASARAGOD POLICE STATION,KASARGOD.

..

PETITIONER/ACCUSED:

**PRADEEPAN P.P,S/O.VASU,AGED 33 YEARS,
GENERAL MERCHANT,GONIKOPPAL,
VIRAJPET TQ,KODAGU DISTRICT,KARNATAKA.**

**BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.K.ASHIS**

RESPONDENT/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,PIN - 682 031.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

pk

APPENDIX

PETITIONER'S ANNEXURES:

**ANNEXURE A:THE CERTIFIED COPY OF THE F.I.R BEARING NUMBER 287 OF
2015 OF KASARGODE POLICE STATION DATED 10.04.2015.**

**ANNEXURE B:A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF THE
VEHICLE OF THE PETITIONER.**

ANNEXURE C:A TRUE COPY OF AUTHORIZATION CERTIFICATE OF NP (GOODS).

**ANNEXURE D:A TRUE COPY OF THE BILL ISSUED FOR THE TRANSPORT OF
SAND DATED 5.4.2015.**

**ANNEXURE E:A CERTIFIED ISSUED BY THE COMMERCIAL TAX OFFICER,
COMMERCIAL TAX CHECK POST, B.MANJESWARAM
DATED 13.5.2015.**

**ANNEXURE F:A TRUE COPY OF THE E-TOKEN NUMBER 32130530324/2015-16/21
DATED 5.4.2015..**

**ANNEXURE G:A TRUE COPY OF THE E-SUGAM FORM ISSUED BY THE
DEPARTMENT OF COMMERCIAL TAXES, GOVERNMENT OF
KARNATAKA DATED 5.4.2015.**

**ANNEXURE H:A TRUE COPY OF THE DELIVERY NOTE IN FORM-15 OF THE
KERALA VALUE ADDED TAX RULES, 2005 DATED 5.4.2015.**

**ANNEXURE I:A TRUE COPY OF C.M.P.NO.1037 OF 2015 PENDING BEFORE THE
HONOURABLE JUDICIAL FIRST CLASS MAGISTRATE,
KASARGODE.**

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3297 of 2015

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Dated this the 24th day of June, 2015

ORDER

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

“..... to quash FIR no.287 of 2015 of Kasargode Police Station to the extent of inclusion of section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 by allowing this Criminal Miscellaneous Petition.”

2. As directed by this Court, the investigating officer concerned (Sub Inspector of Police, Kasargod Police Station) has filed a statement dated 23.6.2015, in this case, which reads as follows:

“2. The accused was arrested and the sand with vehicle seized from the scene. The accused was released on bail on the same day. On the investigation it is revealed that the accused illegally transported river sand in KA 12 A 2904 Lorry negligently after consuming alcohol. The sample (sand) collected has been sent for chemical examination through Hon'ble Court. The examination report yet to be received. Now the case is charge sheeted on 10.04.15 and pending before the Hon'ble J.F.C.M. I Court, Kasargod.

3. It is submitted that the vehicle involved in Cr.No. 287/15 u/s. 279 I.P.C. and 185 of MV Act and Sec.20 of KPRB & RRS Act of Kasargod P.S. was seized on 10.04.2015 without any valid documents related to the said load in the vehicle. At the time of the seizure the driver of the vehicle shows some receipt bills dated 05.04.2015 and it was found that the documents was issued by the Government of Kerala Commercial Tax department at Kerala Check post at Thalappady, it is clear that the said vehicle passed the check post on 05.04.2015 at 10.45 PM. Itself. It is clear that the bills kept in the vehicle were not for the loaded sand. Hence it is clear that the

sand was illegally transporting at the rivers from the Kasargod area, on the good faith the vehicle and the sand was seized from the scene. The above said bill is also seized and submitted before the Hon'ble J.F.C.M. I Court Kasargod.

4. So I came to the conclusion that the sand loaded in the vehicle was illegally transporting with the invalid and time bound bills to somewhere in Kerala on 10.04.2015 by the accused. The accused misguided that the sand was transporting with the reliable documents.

It is humbly prayed that the Hon'ble Court may be pleased to accept this statement and dismiss the petition filed by the appellant for release the vehicle Reg.KA 12A 2904 Lorry."

3. In view of the specific averments in the said statement filed by the investigating officer, this Court is not inclined to consider the rival pleas made by the petitioner and the respondent on merits as those are matters which are eminently within the domain of the investigating agency. It is further pointed out by Sri.G.Sreekumar Chelur, learned counsel for the petitioner that the petitioner has submitted an application as per Anx.I before the jurisdictional Magistrate concerned seeking the prayer of interim custody of the vehicle in question that was seized in connection with the impugned crime and that the same is now posted to 12.8.2015. It is made clear that the disposal of this Crl.M.C. will not in any way preclude the petitioner from urging his contentions in aid of his prayer for seeking any interim custody of the vehicle before the jurisdictional Magistrate and if such application is pending

consideration before the jurisdictional Magistrate concerned, the same may be considered on merits and in accordance with law and in the light of the legal principles laid down by this Court in the case, Asharaf v. Station House Officer reported in 2015 (2) KLT 224.

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

sd/-
ALEXANDER THOMAS, JUDGE

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///True copy///

P.S. to Judge