

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. 3645 of 2015 ()

CRIME NO. 381/2015 OF KARUNAGAPALLY POLICE STATION, KOLLAM DISTRICT

PETITIONER/ACCUSED:

SASIDHARAN, AGED 52 YEARS,
S/O.GOPALAN, VADAKKEVELIYIL VEEDU, VADAKKUMURI,
PADANAYARKULANGARA, KARUNAGAPALLY VILLAGE,
KARUNAGAPALLY TALUK, KOLLAM DISTRICT.

BY ADVS.SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

RESPONDENTS/STATE:

1. STATE OF KERALA,
REPRESENTED THROUGH THE SUB INSPECTOR OF POLICE,
KARUNAGAPALLY POLICE STATION,
REPRESENTED THROUGH BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031.

*ADDL.R2 IMPEADED

*ADDL.R2: THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KOLLAM DISTRICT, ASRAMAM, KOLLAM.

*IS IMPEADED AS ADDL.R2 AS PER ORDER DATED 25/06/2015 IN
CRL.M.A.NO.6042/2015 IN CRL.M.C.NO.3645/2015

*ADDL.R3 IMPEADED

*ADDL.R3: THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KOTTAYAM, CIVIL STATION, COLLECTORATE,
KOTTAYAM-686 002.

*IS IMPEADED AS ADDL.R3 AS PER ORDER DATED 13/07/2015 IN
CRL.M.A.NO.6335/2015 IN CRL.M.C.NO.3645/2015

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:

sts

Crl.MC.No. 3645 of 2015 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX-A** **CERTIFIED COPY OF THE FIR IN CRIME NO.:381/2015 OF
KARUNAGAPALLY POLICE STATION**
- ANNEX-B** **PHOTOCOPY OF THE PASS DATED 07.02.2015 ISSUED UNDER RULE
48 K OF THE KERALA MINOR MINERAL CONCESSION RULES,1967**
- ANNEX-C** **PHOTOCOPY OF THE COMPLAINT DATED 16/03/2015,SUBMITTED BY
THE PETITIONER BEFORE THE POLICE COMPLAINTS AUTHORITY.**
- ANNEX-D** **COPY OF THE REPLY DATED 04/04/2015 ISSUED BY THE PUBLIC
INFORMATION OFFICER & SENIOR GEOLOGIST UNDER THE RIGHT TO
INFORMATION ACT, 2005.**

RESPONDENT(S)' ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

ALEXANDER THOMAS, J.

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Crl.M.C.No.3645 of 2015

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Dated this the 13th day of July, 2015

O R D E R

This Crl.M.C. has been filed for orders of this Court under Section 482 of the Cr.P.C. invoking the inherent powers conferred on this court as per that provision, to quash the impugned Annexure A FIR in crime No.381/2015 of Karungappally Police Station registered for offences under Sections 20 and 21 of the Kerala Protection of River Bank and Regulation of Removal of Sand Act, 2001.

2. Heard. Sri.Brijesh Mohan, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. The case of the petitioner is that he had validly secured Annexure B pass/cash memorandum under Rule 48 K of the Kerala Minor Mineral Concession Rules, 1967 issued from the additional respondent No.3, Senior Geologist, Kottayam for transportation of ordinary sand (and not river sand) in the lorry/vehicle bearing

Registration No. KL-23-G-6988. However the 1st respondent Sub Inspector of Police, Karunagappally police station seized the sand from the petitioner in the aforestated vehicle on 08/02/2015 at 9.25 a.m. on the allegation that the said sand is river sand and that it has been transported illegally without any due permission as per the provision of Kerala Protection of River Bank and Regulation of Removal of Sand Act, 2001 and therefore it attracts the offences under Sections 20 and 21 of the aforestated Act, 2001. The sheet anchor of the defence of the petitioner is that what was transported in the said lorry is ordinary sand for which he had secured lawful permission from the 3rd respondent District Geologist, Kottayam as per Annexure B pass/cash memorandum issued under Rule 48 K of the Kerala Minor Mineral Concession Rules framed under the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 and for transporting 6 metric tonne of ordinary sand (mined from the earth and not from the river) after paying due amounts concerned as evidenced from Annexure B, given on page 11 of the paper book. According to the petitioner, though he secured Annexure B permission on 07/02/2015 at 2:30 p.m. in the

afternoon, he himself had driven the vehicle and transported the extracted ordinary sand from Kottayam District and on the way to Kollam and that he reached Karunagappally at midnight. As his residence is at Karunagappally and it was midnight, he parked the vehicle in front of his house and took rest at home so as to continue his onward journey to Kollam on the next day morning. On the next day morning viz., 08/02/2015, after 9:00 a.m, the 1st respondent, Sub Inspector of Police, Karunagappally Police Station, came to the spot and seized the vehicle with the allegation that the petitioner is unlawfully transporting river sand and not ordinary sand and therefore it amounts to offences under the aforestated River Sand Act under Sections 20 and 21 thereof. The petitioner made Annexure C complaint before the Assistant Commissioner of Police, Kollam and also made request that the truth of the matter can be unravelled either by ascertaining the correct facts from the 3rd respondent District Geologist, Kottayam as to the veracity of Annexure B pass or by getting the seized sand tested in an approved laboratory of Mining and Geology Department as to whether or not it is ordinary sand covered by Annexure B pass or

whether it is river sand covered by the aforesaid River Sand Act 2001.

4. As directed by this Court, the 1st respondent Sub Inspector of Police, Karunagappally (Investigating Officer in the impugned Annexure A crime) was filed a statement dated 24/06/2015. The only contention raised by the said respondent is that Annexure B pass (P-Form) is not valid as on 07/02/2015. A hyper technical contention alone is raised therein by stating that before the amendment of Kerala Minor Mineral Rules, as per the law then existing, P-Form should have the following endorsement on the back side of it viz;

1. Official Seal
2. Designation and name of issuing Officer
3. Its validity date.

But Annexure B has no such endorsement. After the amendment of Kerala Minor Mineral Rules came into force incidentally on 07.02.2015, the same day of alleged incident and that thus Annexure B cannot be said to be a valid pass after the amendment. However, it is clearly admitted in paragraph 5 of the said statement of the 1st respondent that the petitioner's vehicle was seized on

08/02/2015. There is no plea in that statement that the seized sand should necessarily be got tested in the approved lab of the Mining and Geology Department to ascertain as to whether it is ordinary sand (mined from the earth) or river sand. The only contention taken is that Annexure B pass is not valid after the amendment and further that even if it is admitted that the petitioner's transporting on the basis of Annexure B pass, the said Annexure B pass is not valid as on 08/02/2015 as per the amended Rules etc.

5. To resolve this controversy, this Court had directed the impleadment of the Senior District Geologist in Kottayam who has now been impleaded as additional respondent No.3. The Government Pleader has now filed the statement of instruction from the Additional 3rd respondent, District Geologist, Kottayam along with memo dated 10/07/2015 wherein it is stated that Annexure B pass bearing No.540/2014-15/3019/DOY/ML/2014 dated 02/02/2015 is for transporting ordinary sand was issued to one Sri.K.K.Hariharan, Krishnasree, Thonnalloor, as per the provisions laid down in the Kerala Minor Mineral Concession Rules 1967 and

that the total number of 227 transit passes in Form -P were issued to the permit holder Sri.K.K.Hariharan out of which Sl.Nos.401-500 was issued on 02/02/2015 and 501-627 was issued on 03/02/2015. The permit was valid up to 25/02/2015 and all the aforestated transit passes were authenticated by Smt.K.K.Vijaya, former Assistant Geologist of that office. The Petitioner's aforestated Annexure B Permit Number is having Sl.No.502 as can be evident from page 11 of the paper book. The pass was issued to one Sri.K.K.Hariharan and the petitioner was transporting the sand in the lorry driven by him. The number of the lorry which is transporting the sand is clearly shown in Annexure B as KL 23 G 6988 which is the same vehicle covered in Annexure A crime. The respondent do not have any case that Annexure B is fabricated or not genuine. The only hyper technical contention taken by the 1st respondent Sub Inspector of Police is that the rules are amended as on 07/02/2015 the day on which Annexure B was issued and that therefore it was not valid as on 08/02/2015. This Court is really surprised that the 1st respondent Sub Inspector of Police, Karungappally Police Station is taking such a contention. Evidently

it appears to be based on consideration which are not germane and relevant for any valid purposes that such a contention is taken by the Sub Inspector of Police. If at all the Sub Inspector of police had any doubt about the validity of Annexure B pass, he should have made due enquiries with the office of the Senior District Geologist, Kottayam and only if it was revealed beyond doubt that it was fabricated or not genuine that he should have proceeded further. Even in the statement filed by the Sub Inspector of Police he had no contention that he attempted to get this aspect ascertained either from the additional respondent No.3 or that the seized sand should be got tested before the approved laboratory of the Mining and Geology Department. Therefore, the stand taken by the Sub Inspector of Police is nothing short of malafides. The only contention which has been raised by the Sub Inspector of Police in his statement is that Annexure B was not valid as on that date. Based on the instructions furnished by the competent authority viz; additional 3rd respondent-Senior Geologist, Kottayam, this Court has no doubt that Annexure B has been validly issued by Mining and Geology Department as per the provision contained in

Kerala Minor Mineral Concession Rules framed under the provisions of Mines and Minerals (Development & Regulation) Act, for transportation of ordinary sand mined from the earth. Therefore, the impugned crime registered against the petitioner for alleged violation of the provisions contained in the aforestated River Sand Act is nothing but illegal, ultravires and malafide. Accordingly, this Court has no other alternative but to quash the impugned Annexure A FIR in crime No.381/2015 of Karungappally Police Station. Such illegal action of the Police Officers cannot be legally tenable. The legal system should have zero tolerance to such illegal actions done by Police Officers under the guise of exercising their powers under the Code of Criminal Procedure. Accordingly it is ordered in the interest of justice that Annexure A FIR in Crime No.381 of 2015 of Karunagappally Police Station pending against the petitioner and all further proceedings arising therefrom pending against the petitioner will stand quashed.

6. Consequently it is ordered that the 1st respondent shall forthwith release the seized lorry and seized sand of the petitioner within three hours from the date of production of certified copy of

this order. If any undue delay is caused by the 1st respondent for such immediate release of such vehicle, petitioner shall forthwith report before this Court to enable this Court to take strict action against the Police Officer concerned.

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

Sd/-ALEXANDER THOMAS, JUDGE

MJL

