

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

Crl.MC.No. 3896 of 2015

CRIME NO. 542/2014 OF CHINGAVANAM POLICE STATION, KOTTAYAM
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PETITIONER(S)/ACCUSED:

**SANAL E. ISSAC, AGED 29 YEARS,
S/O.ISSAC, EARATHE, VAKATHANAM P.O.,
VAKATHANAM VILLAGE, CHANGANASSERRY TALUK,
KOTTAYAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM,
REP. BY SUB INSPECTOR OF POLICE,
CHINGAVANAM POLICE STATION
KOTTAYAM DISTRICT IN CRIME NO.542 OF 2014.**

BY PUBLIC PROSECUTOR SRI.GITHESH R.

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

msv/

Crl.MC.No. 3896 of 2015

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE-1: CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME
NO.542 OF 2014 OF CHINGAVANAM POLICE STATION, KOTTAYAM
DISTRICT.**

**ANNEXURE-2: CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE SUB
INSPECTOR OF POLICE IN CRIME NO.542 OF 2014 OF CHINGAVANAM
POLICE STATION, KOTTAYAM DISTRICT.**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

ALEXANDER THOMAS, J.

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Crl.M.C No.3896 of 2015

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Dated this the 7th day of July, 2015

O R D E R

The prayer in this Crl.M.C is to quash the impugned Anx-2 final report/charge sheet filed in the impugned Anx-1 F.I.R in Crime No.542/2014 of Chingavanam Police Station registered for offences u/s 4 (1)(A) r/w section 21(1) of the Mines and Mineral Development and Regulation Act (MMDR Act) 1957 and Section 3(1) r/w 181 of the Motor Vehicles Act. The petitioner is accused No.3 in the aforestated impugned criminal proceedings. The main contention urged by the petitioner is that in view of the specific mandate of the provisions contained in Sec.22 of the MMDR Act, cognizance for the offences envisaged in that act can be taken only on the basis of a complaint in writing of the authorized officer and therefore it is contended that no cognizance could be taken on the basis of a final report/charge sheet/police report as has been done in the instant case. It is the indisputable case that the FIR in question has been registered by the police for the offences under MMDR Act which has

led to the impugned Anx.2 final report/charge sheet. The Supreme Court in the case State of N.C.T of Delhi v. Sanjay [2014 (3) KLT 1033 (SC)] that no cognizance can be lawfully taken in respect of the offences under the MMDR act except on the basis of a complaint in writing of the authorized officer. But further it was made clear in that decision, that cognizance in respect of offences under the Indian Penal Code could be taken in accordance with law on the basis of such police report in accordance with law. It is the case of the petitioner, who is the accused No.3 that the offences alleged against him are only those under Sections 4 (1)(A) r/w section 21(1) of the MMDR Act 1957 and that the offences under sections 3(1) r/w 181 of the Motor Vehicles Act is directed only against the accused No.1 etc.

2. Sec.3(1) of the Motor Vehicles Act, reads as follows:

3. Necessity for driving license.-(1) No person shall drive a motor vehicle in any public place unless he holds an effective driving licence issued to him authorising him to drive the vehicle; and not person shall so drive a transport vehicle [other than [a motor cab or motor cycle] hired for his own use or rented under any scheme made under sub-section (2) of section 75] unless his driving licence specifically entitles him so to do.

3. Sec.181 of the Motor Vehicles Act, 1988, provides as follows:

"Driving vehicles in contravention of section 3 or section 4.-
Whoever drives a motor vehicle in contravention of section 3 or section 4 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

4. Since the offences under the Motor Vehicles Act are created by a special enactment, Schedule to Table No.2 (Classification of offences against other law) under First Schedule (Classification of offence) provided in the Code of Criminal Procedure has to be examined to determine whether such an offence is cognizable or non-cognizable. The last item of Table No.2 (Classification of offences against other laws) under Schedule I Cr.P.C. provides that if the offence created by the other laws is punishable with imprisonment for less than three years or with fine, then the offence is non-cognizable and is bailable and is triable by any Magistrate. Since the maximum imprisonment that can be imposed for the offence under Sec.3(1) read with Sec.181 of the Motor Vehicles Act can only extend upto three months, the said offence under the Motor Vehicles Act is a non-cognizable offence. Since the offence involved in MMDR Act in the impugned crime is not prosecutable on the basis of the Police Report, the criminal proceedings in that regard are liable to be interdicted. However, since the other remaining offences in the impugned Anx.2 final report/charge sheet are only the aforesaid offences under the Motor Vehicles Act, which are non-cognizable, the impugned Anx.2 final report/charge sheet to the extent it includes even the offences

under the Motor Vehicles Act is not maintainable as the latter offences being non-cognizable offences cannot be independently prosecuted. Otherwise it will amount to violation of the mandate of Sec.155(2) of the Cr.P.C. and the respondents have no case that they have obtained the prior permission of the Magistrate as mandated in Sec.155 (2) of the Cr.P.C. for investigating those non-cognizable offences. Accordingly, the impugned Anx.2 final report/charge sheet filed in the impugned Anx.1 Crime No.542/2013 of Chingavanam Police Station and all further proceedings arising therefrom pending against the petitioner are quashed. However, it is made clear that the authorised officer as envisaged in Sec.22 of the MMDR Act will be at liberty to proceed in compliance with the provisions contained in MMDR Act, more particularly Sec.22 thereof, in respect of the offences under that Act, subject to the other legal prescriptions that may govern the situation.

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

sd/-

sab

ALEXANDER THOMAS, JUDGE