

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

Cr1.MC.No. 2959 of 2014

AGAINST CC 326/2010 OF THE JUDICIAL FIRST CLASS MAGISTRATE-III,
THRISSUR
CRIME NO. 69/2010 OF OLLUR POLICE STATION, TRISSUR

PETITIONER/ACCUSED:

AMBUJAKSHAN,
S/O.SANGARAN, THEKKETHARA HOUSE,
ELAMTHURUTHY DESOM,
MARATHAKKARA VILLAGE,
THRISSUR.

BY ADVS.SRI.LINDONS C.DAVIS
SMT.E.U.DHANYA

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 2959 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-'A': COPY OF THE FIR NO.69/2010 OF OLLUR POLICE STATION
DATED 23.1.2010.

ANNEXURE-'B': COPY FINAL REPORT FILED OF NO.70/10 WAS FILED ON
4.2.2010 BEFORE JFCM-III, THRISSUR

ANNEXURE-'C': COPY OF COMPLAINT FORM UNDER "KERALA PROTECTION OF
RIVER BANKS AND REGULATION OF REMOVAL OF SAND ACT".

ANNEXURE-'D': COPY OF G.O(MS) NO.20/14/ID DATED 12.2.2014.

ANNEXURE-'E': COPY OF LICENSEE ISSUED TO PETITIONER DATED
4.2.2009

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.2959 of 2014

Dated this the 27th day of February, 2015

O R D E R

A prosecution against the petitioner under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1956 is under challenge, mainly on the ground that there is no complaint as required under Section 22 of the Act.

2. On a perusal of the records, I find that cognizance was taken by the court below on the final report submitted by the police under Section 173(2) of the Code of Criminal Procedure. Section 22 of the Act provides that, no court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. Thus what is contemplated is a complaint, and not a police report under Section 173(2) of the Code of Criminal Procedure. Admittedly, there is no complaint in this case. However, the police is at liberty to file a proper complaint under the law within the period

of limitation. Without prejudice to this right the present prosecution can be closed.

In the result this petition is allowed. The prosecution against the petitioner in C.C No.326/2010 of the Judicial First Class Magistrate Court III, Thrissur will stand quashed under Section 482 of the Code of Criminal Procedure in view of the bar of cognizance under Section 22 of the Mines and Minerals (Development and Regulation) Act, 1956, of course without prejudice to the right of the police to file a proper complaint within the period of limitation, as provided under Section 22 of the Act.

**P.UBAID
JUDGE**

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