

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

Crl.MC.No. 4784 of 2015

CRIME NO. 551/2015 OF PARIYARAM MEDICAL COLLEGE POLICE STATION, KANNUR
.....

PETITIONER(S)/ACCUSED :

**KAYAKKOOL SHAKKEER, AGED 29 YEARS,
S/O MUHAMMED KUNHI, KAYAKKOOL HOUSE, THOTTEKKAL,
KOOVERI P.O., KOOVERI AMSOM, TALIPARAMBA TALUK,
KANNUR DISTRICT.**

**BY ADVS.SRI.V.A.SATHEESH
SRI.V.T.MADHAVANUNNI**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM,
THROUGH S.H.O. PARIYARAM MEDICAL
COLLEGE POLICE STATION, KANNUR DISTRICT.**

**BY ADV. SRI. TOM JOSE PADINJAREKARA (ADDL.DGP)
PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
11-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE A1: TRUE CERTIFIED COPY OF THE FIR IN CRIME NO. 551/15 OF
PARIYARAM MEDICAL COLLEGE POLICE STATION DTD. 23/5/15.**

**ANNEXURE A2: TRUE CERTIFIED COPY OF THE SEIZURE MAHAZAR PREPARED BY
THE POLICE IN CRIME NO 551/15 OF PARIYARAM MEDICAL COLLEGE
POLICE STATION.**

**ANNEXURE A3: TRUE CERTIFIED COPY OF THE REGISTRATION CERTIFIED
OF KL-13-C-2027.**

**ANNEXURE A4: TRUE COPY OF THE RECEIPT ISSUED FROM CHAPPARAPPADAVU
GRAMA PANCHAYAT DTD. 23/1/15.**

**ANNEXURE A5: TRUE COPY OF THE SAND PASS ISSUED BY THE DEPUTY
COLLECTOR, KANNUR DATED 21/3/15.**

**ANNEXURE A6: TRUE COPY OF THE REGISTRAR SHOWING THE TRANSPORTATION
OF SAND FROM KADAVU ISSUED BY THE SECRETARY OF
CHAPPARAPPADAVU GRAMA PANCHAYATH.**

**ANNEXURE A7: TRUE COPY OF THE RECEIPT SIGNED BY ONE PRAMEELA RAJAN,
POONAMKOTTU DTD. 22/5/15**

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE.

ALEXANDER THOMAS, J.

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Dated this the 11th day of August, 2015.

ORDER

The prayer in this Crl.M.C instituted under Sec.482 of the Cr.P.C invoking the inherent powers as per that provision is for an order to quash the impugned Anx-A1 FIR in Crime No.551/2015 of Pariyaram Medical College Police Station, Kannur District, registered against the petitioner for offences under Sec.20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

2. Heard Sri.V.A.Satheesh, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent-State of Kerala.

3. The petitioner is stated to be a driver of Tata 407 Model Mini Lorry bearing Reg.No.KL-13C-2027. Anx-A1 FIR was registered on 23.5.2015 in respect of the above crime at 10:15 hrs and the time of detection is 9:00 a.m. hrs on that day. (23.5.2015). The prosecution case is that the respondent-Sub Inspector of Police, Pariyaram Medical College Police Station, secured information on 23.5.2015 that the

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petitioner was transporting river sand in the above vehicle and that on search by the police party at 9:00 a.m. on 23.5.2015, it was seen parked on the roadside at Arippambra Junction and that remnants of river sand were detected on the body of the lorry, etc.

4. As per Anx-A2 seizure mahazar the vehicle was seized by the police on 23.5.2015 at 9:30 hrs. Anx-A3 is the Registration Certificate of the above said vehicle where petitioner's brother one Sri.Kayakkol Jafer, is the registered owner. It is the case of the petitioner that the petitioner's vehicle was registered before the Chapparappadavu Grama Panchayath for the purpose of river sand transportation as borne out by Anx-A4. Further it is stated that the Secretary of the said Grama Panchayath and the Deputy Collector, Kannur have jointly issued permit for transporting three tons of loads of river sand from Poonamkottu Kadavu. The petitioner had transported sand on 22.5.2015 in terms of the sand pass so issued to him that the sand pass in question was issued to one Prameela Rajan on 7.4.2015 on which day there was a temporary ban for sand removal imposed by the District Collector and so the sand pass was revalidated to 22.5.2015 as borne out by Anx-A5. It is stated that in terms of Anx-A5 the sand was

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transported from Kadavu to the place of Prameela Rajan on 22.5.2015 by the petitioner in the above vehicle. Anx-A6 is said to be the register prepared by the supervisor appointed by the Panchayath wherein the allotting of sand to Prameela Rajan by the petitioner's mini lorry is clearly stated. That after unloading the sand the sand receipt is to be obtained by the lorry driver on 22.5.2015 after unloading the sand Prameela Rajan had signed a receipt as borne out by Anx-A7 dated 22.5.2015. It is the specific case of the petitioner that the petitioner had transported sand strictly as per Anx-A5 to A7 documents and that he was not actually transporting sand on 23.5.2015 and that certainly after unloading of the sand on the previous day, the remnants of the sand was there in the lorry in which there is nothing anguish, etc. It is also contended by the petitioner that the very fact that remnants of the sand was found on the body of the lorry itself would not in any way rule out the possibility of the petitioner transporting sand on the immediate previous day but would only prababalise the case of the petitioner that he was transported the sand on the previous day. That the defacto complainant is not in good terms with the petitioner and a false case was instituted against the petitioner and that he is innocent of

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the allegations etc.

5. A statement dated 1.8.2015 has been filed by the SHO, Pariyaram Medical College Police Station as directed by this Court. In paragraph 5 of the said statement it is clearly stated that remnants of sand was seen here and there on the platform of the lorry. This is the main allegation and that therefore the petitioner must have been unlawfully transported river sand on 23.5.2015. However, it is clearly stated in paragraph 6 of the said statement regarding the petitioner's averments based on Anx-A5 dated 22.5.2015 in relation to the sand pass duly issued for transporting the sand on that day that the validity of the pass is for a single day and it is restricted to the time stated in the pass and therefore the pass is not valid on the next day i.e., 23.5.2015 and therefore it is clearly admitted by the respondent police authorities concerned that the case of the petitioner that he has secured lawful pass from the Chapparappadavu Panchayath and he had transported river sand on the previous day i.e., 22.5.2015 is correct. The only issue is as to whether the petitioner should be subjected to the rigour of the impugned criminal proceedings merely on the fact that remnants of sand were found on the platform of the lorry in question on the next

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day i.e., 23.5.2015 and that too at 9:00 a.m. in the morning. True, that the respondent has taken up a contention in paragraph 7 of their statement that there is no lawful authorized place near to the place where the lorry was seized on 23.5.2015 at 9:00 a.m. and that the petitioner evaded the arrest in the impugned crime, etc. as the adverse circumstances against the petitioner's case. The explanation of the petitioner is that after transport of the sand on the previous day he had parked the lorry at the spot in question. It is common ground that the petitioner had a lawful pass to transport sand on 22.5.2015. The only question for consideration before this Court is as to whether the impugned criminal proceedings initiated against the petitioner merely on the allegations that remnants of sand was found here and there in the platform of the lorry would be a reasonable and proper exercise of power and whether it would amount to vexatious initiation of criminal proceedings based on hyper technical pleas. This Court is of the considered opinion, having regard to the admitted fact, that the petitioner was having a lawful pass on the previous day and that he had in fact transported sand on the previous day and merely because remnants of sand were found in the platform of the lorry here and

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there, would not be a reasonable and fair exercise of powers in the matter of initiation of criminal proceedings in the facts and circumstances of the case. Except, these remnants of sand no other portion of the sand have been seized by the police. Therefore, in the narrow compass of the facts and circumstances of the case, this Court is of the considered opinion that any further continuation of the criminal proceedings is not only rigorous based on hyper technicality but would also rather be vexatious and would therefore amount to abuse of the due process of the court. In this view of the matter, the allegations and counter allegations raised by the rival parties regarding the alleged bad relationship with the police authorities are not being considered in this proceedings.

6. In view of these aspects, it is ordered in the interest of justice that the impugned Anx-A1 FIR in Crime No.551/2015 of Pariyaram Medical College Police Station, Kannur District pending against the petitioner and all further proceedings arising therefrom pending against the petitioner stand quashed. It is also ordered that the seized vehicle shall be released to the petitioner immediately. It is made clear that the observations and finding in this order is only made

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on the issue as to whether impugned criminal proceedings are liable to be quashed and these findings and observations in this order shall not in any way trammel or influence any other proceedings between the parties on the issue including civil proceedings which will have to be independently heard and decided.

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

ALEXANDER THOMAS,
Judge.

bkn/-