

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 4869 of 2015 ()

CMP 593/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I MUVATTUPUZHA

PETITIONER/PETITIONER :

**KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.
RAW MATERIAL DIVISION, P.B.NO.16, GANDHI NAGAR KOCHI-20
REPRESENTED BY ITS MANAGING DIRECTOR DR. SAJI BASHEER.**

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS/RESPONDENTS :

- 1. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. DISTRICT COLLECTOR
COLLECTORATE, CIVIL STATION, KAKKANAD
ERNAKULAM-30.**
- 3. P.B. KABEER KHAN
S/O.BAVA RAWTHAR, POTTAIKANDATHIL HOUSE,
N.G.O QUARTERS, MUVATTUPUZHA - 686 611.**
- 4. DISTRICT POLICE CHIEF (RURAL)
ALUVA.683 101.**

R1,R2 & R4 BY PUBLIC PROSECUTOR SMT.P. MAYA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-08-2015,THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**ANNEXURE I: TRUE COPY OF FIR DATED 31.3.2015 IN CRIME NO.782/2015 OF
MUVATTUPUZHA POLICE STATION.**

**ANNEXURE II: TRUE COPY OF CMP NO.593/2015 DATED 24.4.2015 BY PETITIONER
BEFORE JFMC-I, MUVATTUPUZHA.**

**ANNEXURE III: TRUE COPY OF ORDER DATED 11.5.2015 IN CMP NO. 593/2015 BY
JFMC-I, MUVATTUPUZHA.**

**ANNEXURE IV: TRUE COPY OF APPLICATION DATED 23.5.2015 SUBMITTED BY
PETITIONER BEFORE THE 2ND RESPONDENT.**

**ANNEXURE V: TRUE COPY OF COMMUNICATION DATED 20.6.2013 FROM 2ND
RESPONDENT TO DISTRICT POLICE CHIEF(RURAL), ALUVA.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

ALEXANDER THOMAS, J.

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Dated this the 20th day of August, 2015.

ORDER

The order under challenge is the one impugned at Anx-III dated 11.5.2015 rendered by the Judicial First Class Magistrate Court-I, Muvattupuzha in C.M.P.No.593/2015 in Crime No.782/2015 of Muvattupuzha Police Station whereby the request of the petitioner (who is not an accused in the crime but only the owner of the seized Bitumen) for interim release of the Bitumen seized in connection with the impugned crime for offence under Secs.3 & 7 of the Essential Commodities Act which was registered on the ground that there is bar of jurisdiction for the jurisdictional Magistrate Court concerned from considering the said plea under Sec.451 Cr.P.C in view of the provisions contained in Sec.6E of the Essential Commodities Act.

2. Heard Sri.R.T.Pradeep, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents 1, 2 & 4.

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3. It has been held by the Apex Court in the case State of Madhya Pradesh v. Ramehwar Rathod reported in AIR 1990 SC 1849 = (1990) 4 SCC 21 = 1990 KHC 319 paragraph 6 of the case which reads as follows:

“6. It was next contended by the respondent before the High Court that the criminal court was empowered under Section 7 of the Act to confiscate the vehicle after due and proper inquiry and therefore the proceedings by the District Collector under Section 6-A and Section 6-B of the Act should be quashed. Reliance was placed on several decisions and authorities. Our attention was drawn to the decision of the Mysore High Court in the case of State v. Abdul Rasheed, Bharat Mahey v. State of U.P as well as the decision of the learned Single Judge in State of M.P. v. Basant Kumar. On a consideration of the relevant authorities, the High Court came to the conclusion that the criminal court had jurisdiction to deal with the matter. Mr Deshpande sought to argue that in view of the enactment of the provisions of Section 6-A as well as Section 7 of the Act, it cannot be held that the criminal court continued to retain jurisdiction. He submitted that in view of the enactment of these provisions, it would be useless to hold that the criminal court continued to retain jurisdiction, otherwise the very purpose of enacting Section 6-A read with Section 7 would be defeated. We are, however, unable to accept this contention because normally under the Criminal Procedure Code, the criminal courts of the country have the jurisdiction and the ouster of the ordinary criminal court in respect of a crime can only be inferred if that is the irresistible conclusion flowing from necessary implication of the new Act. In view of the language used and in the context in which this language has been used, we are of the opinion that the High Court was right in coming to the conclusion that the criminal court retained jurisdiction and was not completely ousted of the jurisdiction. In that view of the matter, the High Court was therefore right in passing the order under

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consideration and in the facts and circumstances of the case to return the vehicle to the respondent on furnishing the security. In the premise the appeal must fail and is dismissed. There will, however, be no order as to costs.”

In the light of the decision of the Apex Court, this Court in the case Chacko v. State of Kerala reported in 2012 (2) KLT 387 has held that the jurisdictional Magistrate Court has the power under Sec.451 to entertain the plea for interim release of the articles seized in connection with crimes involving offence under the Essential Commodities. Sec.6E of the Essential Commodities Act reads as follows:

6E:Bar of jurisdiction in certain cases.- Whenever any essential commodity is seized in Pursuance Of an Order made under Section 3 in relation thereto, or any package, covering or receptacle in which such essential Commodity is found, or any animal, vehicle, vessel or other conveyance used in carrying such essential commodity is seized pending Confiscation under Section 6A, the Collector, or, as the case may be, the Judicial Authority appointed under Section 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any other court, tribunal or authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.

The Bar of jurisdiction as envisaged under the Essential Commodities Act arises only when the article in question is seized

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during the pendency of confiscation proceedings. In this case, indisputably no confiscation proceedings have been initiated till date. Moreover, the learned counsel for the petitioner has a specific case that the Bitumen is not an article or product which comes within the ambit of Essential Commodities Act or the Orders or Rules framed thereunder. This Court in the order dated 3.6.2015 in Crl.M.C.No.3027/2015 had directed in a similar case that the jurisdictional Magistrate court concerned (Judicial First Class Magistrate Court, Muvattupuzha dealing with CMP.No.570/2015 in Crime No.782/2015 of Muvattupuzha Police Station) that the court below pointedly decide the issue as to whether the Bitumen is a product within the ambit of Essential Commodities Act and the Orders and Rules framed thereunder. In compliance with the said direction issued by this Court, it has already ordered by the learned Magistrate in order dated 12.6.2015 in Crl.M.P.No.570/2015 in Crime No.782/2015 of Muvattupuzha Police Station holding that prosecution could not produce any document to show that the Bitumen is notified as an essential commodity within the meaning of Essential Commodities

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Act or Orders and Rules framed thereunder. In the light of the said order, the impugned order is set aside and the matter is remitted back to the court below for passing orders afresh after hearing both sides. The court below will consider the issue as to whether Bitumen is a product of essential commodity or product within the meaning of Essential Commodities Act or under the Orders and Rules framed thereunder and shall also consider the merits of the plea made by the petitioner in the light of the principles laid down by the Apex Court in Madhya Pradesh v. Ramehwar Rathod reported in AIR 1990 SC 1849 = (1990) 4 SCC 21 = 1990 KHC 319, after hearing the petitioner through his counsel, if any, and the Prosecutor concerned. The court below will render a decision within a period of 3 weeks from the date of production of a certified copy of this order.

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

ALEXANDER THOMAS,
Judge.

bkn/-