

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Cr1.MC.No. 4680 of 2013 ()

CRIME NO. 302/2013 OF NEDUMBASSERY POLICE STATION , ERNAKULAM

PETITIONER(S)/PETITIONER/ACCUSED:

SHEMEER C.S.
392-A, CHETHIKODE 12
NAYATHODE 683 572

BY ADVS.SMT.K.P.SANTHI
SMT.BEENA JOHN
SRI.R.JAYAKRISHNAN (MUTHUKULAM)
SMT.K.VINAYA

RESPONDENT(S)/RESPONDENTS/STATE:

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

BY PUBLIC PROSECUTOR SMT.MADHU BEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 4680 of 2013 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE 1 TRUE COPY OF THE C3RTIFICATE OF REGISTRATION DATED
5-11-2012 SSUED BY THE COMMERCIAL TAXES DEPARTMENT

ANNEXURE II TRUE COPY OF THE LICENSE DATED 7-3-2013 ISSUED BY THE
ANGAMALY MUNICIPALITY

ANNEXURE III TRUE COPY OF THE FIR IN CRIME NO 302/13 OF
NEDUMBASSERY POLICE STATION

ANNEXURE IV TRUE COPY OF THE REPORT DATED 27-04-2013 OF
DIRECTORATE OF MINING AND GEOLOGY

RESPONDENT(S) ' EXHIBITS NIL

//TRUE COPY//

P.A TO JUDGE

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'C.R'

MARY JOSEPH, J.

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Crl.M.C. No.4680 of 2013

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Dated this the 16th day of October, 2015

ORDER

Petitioner is the accused in Crime No.302 of 2013 of Nedumbassery Police Station registered for the offences punishable under Section 4(1)(A) r/w Section 21(1) of the Kerala Mines and Minerals (Development & Regulation) Act - 1957 (hereinafter referred to as 'the Act 1957', for short) and Section 23 r/w Section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as 'the Act 2001', for short). The petitioner seeks to quash the F.I.R, the true copy of which is annexed to this petition as Annexure III.

2. The averments of the petitioner are to the following effect:

Petitioner is a registered dealer under the Value Added Tax and has been granted TIN No.32150898911. As per the certificate of registration obtained by him on 05.11.2012 from the Commercial Tax Department, he has been granted permission to deal with

building materials, river sand etc. The copy of the certificate of registration is annexed to this petition as Annexure I. Petitioner has also obtained a licence from Angamali Municipality on 07.03.2013 for dealing with building materials and that is valid upto 31.03.2013. The true copy of the licence aforesaid is annexed with this petition as Annexure II.

3. On the basis of Annexures I and II, the petitioner has been selling sand and building materials. On 07.03.2013, the Sub Inspector of Police, Aluva Police Station took the sand which was stored in the compound behind house No.267 of Angamali Village, into custody, alleging that the sand is river sand and it has been unauthorisedly kept therein. On the basis of the seizure, the Sub Inspector of Police, Aluva Police Station has registered Annexure III crime, which is sought to be quashed, by this petition.

4. It is contended by the petitioner that samples of sand collected from the premises of house No.267 of Angamali Village was sent for examination to the Directorate of Mining and Geology. After the examination, a report was obtained on 27.04.2013

wherein the sand examined was reported as ordinary sand. Annexure IV is the copy of the said report obtained from the Directorate of Mining and Geology, annexed to the petition.

5. When the matter came up for admission, the learned Public Prosecutor took notice for the respondent.

6. Heard Smt.K.P.Santhi, learned counsel for the petitioner and Smt.Madhu Ben, learned Public Prosecutor appearing for the respondent.

7. It is the argument of Smt.K.P.Santhi, learned counsel for the petitioner, that the petitioner at no point of time was dealing with river sand, as alleged in Annexure III. According to her, he was dealing only with ordinary sand and it was as per authority conferred on him by Annexure I and II. Placing reliance upon Annexure IV report the learned counsel has re-iterated that the sand seized from the compound of house No.267 of Angamali Village was ordinary sand. It is the argument of the learned counsel that the sand seized being ordinary sand, the offence alleged and Annexure III report registered by Nedumbassery Police on the basis

will not sustain in law. It is also argued by the counsel that even going by the allegations levelled against the petitioner in Annexure III F.I.R, any violation of the provisions of 'the Act 1957', by the petitioner, is made out. It is in the said circumstances this court is approached by the petitioner seeking to quash Annexure III F.I.R which, according to him, is totally unsustainable in law and facts.

8. The learned Public Prosecutor, Smt.Madhu Ben submitted that the registration of Annexure III crime by the respondent against the petitioner is perfectly legal as ingredients of the offences alleged therein are well attracted from the materials available. According to her, therefore, there is absolutely no reason for this court to interfere. It is submitted by the learned Public Prosecutor that the licence required by the provisions of 'the Act 1957' for stocking and dealing with ordinary sand was not possessed by the petitioner and sand has been kept in the compound of house No.267, Ward No.XIV without authority and therefore, Annexure III F.I.R registered against the petitioner is legal and proper. It is also submitted by the learned Public Prosecutor that Annexure I is only

a certificate of registration issued by the Commercial Tax Officer, Angamali and Annexure II licence was obtained from the Health Supervisor, Municipal Office, Angamali and those have no bearing upon the issue of stocking of ordinary sand under 'the Act 1957'. However, it is conceded by the learned Public Prosecutor on the basis of Annexure IV report that the sand seized in the case on hand is ordinary sand and not river sand.

9. As per the allegations in Annexure III, 11 loads of river sand was found kept in the compound of house No.267, Ward No.XIV of Angamali Municipality. A seizure mahazar was prepared in the presence of two independent witnesses and the sand was taken into custody. Going by the seizure mahazar on the basis of which Annexure III F.I.R was registered, it could be seen that the Sub Inspector of Police, Aluva Police Station has proceeded to the spot along with his companion policemen on the direction of the District Police Chief, Ernakulam Rural and upon information furnished that 18 loads of river sand was kept stocked unauthorisedly in the compound of house No.267, Ward No.XIV of Angamali Municipality,

situated on the eastern side of St.Joseph's Church situated in Nedumbassery –Mattoor road. When reached at the spot, sand was found stocked there as per the information obtained. One person named Isham, son of Aboobecker, Pallathukadavu was found at the spot and he was identified as an employee of one C.S Shameer. When questioned about the authority to keep the sand there, he answered in the negative and thereupon on the bona fide belief that river sand was kept stocked there without any authority by Sri.C.S Shameer, the employer of Sri.Isham that it was seized and the crime was registered on its basis. It is seen from Annexure IV report that sample taken from the seized sand was sent to the Chemical Laboratory attached to the Directorate of Mining and Geology, Kesavadasapuram, Pattom Palace, Thiruvananthapuram and after the analysis a report was forwarded from the laboratory to the Sub Inspector of Police, Nedumbassery Police Station who has registered the crime as Annexure III, reporting that the sand was identified as ordinary sand (sand escavated from place other than stream) in the analysis. Annexure IV report was obtained on

27.04.2013. In view of Annexure IV report, the sand seized in the case in question ceased to be river sand. Therefore, in view of Annexure IV report, the offence alleged under Section 23 r/w Section 20 of 'the Act 2001' undoubtedly will not sustain.

10. Offence under Section 4(1)(A) r/w Section 21(1) of 'the Act 1957' is also alleged against the petitioner as per Annexure III. Section 4(1)(A) is reproduced hereunder for convenient reference as follows:

“4. Prospecting or mining operations to be under licence or lease:—(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the Rules made thereunder:

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in

accordance with the provisions of this Act and the Rules made thereunder.”

11. Section 21(1) provides for penalties for contravening the provisions of section 4 of 'the Act,1957'. It provides that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs.25,000/- or with both. Therefore, the penalty for contravening the provisions of sub-section (1A) of Section 4 is contained in Section 21.

12. As per Section 15 of 'the Act 1957' ,power is conferred on the State Government to make Rules in respect of minor minerals. It reads as follows:

“15.Power of State Government to make Rules in respect of minor minerals:– (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of [quarry leases, mining leases or other mineral

concessions] in respect of minor minerals and for purposes connected therewith.”

13. In exercise of the power conferred under Section 15 of 'the Act 1957', the State Government has formulated rules as “The Kerala Minor Mineral Concession Rules, 1967” (hereinafter referred to as 'the Rules 1967', for short). Chapter VII A of 'the Rules 1967' deals with stocking and selling of minor minerals. Section 48A provides that for stocking, selling or offering for sale any minor minerals by any person other than a quarrying permit holder or quarrying leaseholder a dealer's licence is required. It reads :

“48A. Licence for a dealer:– No person, other than a quarrying permit or a quarrying lease holder, shall stock, sell or offer for sale any minor minerals mentioned in Schedule 1 in any place in the State, except under a dealer's licence issued under the seal and signature of the competent authority, if Government have issued no notification to that effect in the case of any

minor mineral in the whole state or in any particular area.”

14. Therefore, for stocking, selling or offering for sale of any minor minerals mentioned in Schedule 1 in any place in the State, by a person other than a quarrying permit holder or a quarrying lease holder, a dealer's licence issued under the seal and signature of the competent authority is necessary, if the Government have issued no notification to that effect in the case of any minor mineral in the whole State or in any particular area.

15. Therefore, the competent authority referred to in Rule 48A shall be the authority notified by the Government in respect of the whole State or with reference to any particular area.

16. Rule 48B provides in it, the form and the manner in which an application shall be preferred for obtaining a dealer's licence and for getting it renewed. It contains in its sub-rule (a) that every application for dealer's licence shall be made to the competent authority in Form 'K'. On referring Form 'K' it is seen that an application for grant/renewal of dealer's licence is to be submitted

to the Director of Mining and Geology through the Geologist.

17. Form 'L' is the format of the dealer's licence . As per Form 'L' the competent authority to sign the licence is the Deputy Director, Mining & Geology. Therefore, the appropriate authority to issue a dealer's licence as per Rule 48B is the Deputy Director, Mining & Geology.

18. In the case in question, the petitioner has not obtained the dealer's licence in Form 'L' issued by the Deputy Director, Mining & Geology as contemplated under Section 48B . Annexure II is not the licence required to be possessed by a dealer of ordinary sand which is a minor mineral, for stocking or selling as per the provisions of 'the Rules 1967'. Therefore, admittedly of the petitioner, he is in possession of Annexure II licence and not in possession of the licence in Form 'L'.

19. Therefore, there is every reason to hold that the petitioner has stocked ordinary sand without possessing a dealer's license and acted in contravention of Section 48A of 'the Act 1957'. Therefore, undoubtedly the offence under Section 4(1)(A) liable to

attract the penalty under Section 21(1) of 'the Act 1957' will be attracted in the facts and circumstances of the case on hand and therefore, the argument of the learned counsel smt.Santhi that being in possession of Annexure 11 Licence and Annexure 1 Certificate of Registration the petitioner had every authority to stock ordinary sand in the compound of his house and that Annexure III F.I.R is only liable to be quashed as the offences alleged are not attracted will not sustain.

20. In the case on hand, the Judicial First Class Magistrate – II, Aluva has taken cognizance on the basis of Annexure III report. As per Rule 59 of 'the Rules 1967', cognizance of an offence punishable under the Rules can be taken by a Court only upon complaint in writing made by a person authorised in this behalf by the State Government as the competent authority. The rules also provide that the name or the designation of such person shall be published in the Gazette. Accordingly, as per the Notification published by the State Government in the Gazette as Notification No.1073/MI/97 dated 14.12.1998, the designated officer or the

authorised officer as per Rule 59 of 'the Rules 1967' in respect of Ernakulam District is the Mineral Revenue Inspector, District Office, Ernakulam. Therefore, the Competent Officer to file a complaint containing the allegations regarding contravention of the provisions of 'the Rules 1967' before the Court enabling it to take cognizance will be the Mineral Revenue Officer, District Office, Ernakulam in so far as the offence is committed at Ernakulam.

21. In the case on hand, cognizance was taken by Judicial First Class Magistrate – II, Aluva on Annexure III F.I.R filed by the Sub Inspector of Police, Nedumbassery Police Station. The Sub Inspector of Police, Nedumbassery Police Station is not the competent authority as per the provisions of 'the Act 1957' and 'the Rules 1967'. Moreover, the allegations are not forwarded to the learned Magistrate in the form of a private complaint. Therefore, the learned Judicial First Class Magistrates' action of taking cognizance upon Annexure III F.I.R will not sustain in view of the clear bar contained in Rule 59 of 'the Rules 1967'.

22. In view of the aforesaid discussion, I am of the view that Annexure III F.I.R will not sustain in the eye of Law and cognizance taken by the Judicial First Class Magistrate – II Aluva on the basis of Annexure III F.I.R is purely illegal, improper and erroneous, In the circumstances, Annexure III F.I.R and all further proceedings initiated on it's basis is liable to be quashed. In the result, Crl.M.C. is allowed. Annexure III F.I.R and all further proceedings initiated thereon are hereby quashed.

Sd/–
MARY JOSEPH, JUDGE

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The words “Section 48A” occurring in the 5th line of paragraph 13 at page 9, “Section 48B” occurring in the 3rd line of paragraph 18 at page 11 and “Section 48A of the Act, 1957” occurring in the 3rd line of paragraph 19 at page 11 of the final order dated 16/10/2015 is corrected and substituted as “Rule 48A”, “Rule 48B” and “Rule 48A of Rules 1967” respectively as per order dated 04/03/2016 in Crl.M.A No.11800/2015 in Crl.M.C No.4680/2013.

Sd/– Registrar (Judicial)