

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 5TH DAY OF OCTOBER 2015/13TH ASWINA, 1937

Crl.MC.No. 6292 of 2015

CC.NO.362/15 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, ANGAMALY.
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PETITIONER/ACCUSED:

**RANJITH, AGED 32 YEARS,
S/O. RAVI, POKKANCHERRY HOUSE,
PARAKADAVU KARA, PARAKADAVU VILLAGE,
ERNAKULAM DISTRICT.**

BY ADV. SRI.K.S.RAJEEV (ALUVA)

RESPONDENT/COMPLAINANT/STATE:

**STATE OF KERALA,
THROUGH SUB-INSPECTOR OF POLICE,
ANGAMALY POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN-682031.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 05-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

Crl.MC.No. 6292 of 2015

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A- CERTIFIED COPY OF FINAL REPORT DATED 17-6-10.

ANNEXURE B- CERTIFIED COPY OF ORDER IN CMP.NO. 699/15 DATED 28-7-15.

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

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B.KEMAL PASHA, J.

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CRL.M.C. No.6292 of 2015

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Dated this the 5th day of October, 2015

ORDER

The petitioner is the accused in C.C.No.362 of 2015 pending before the Judicial First Class Magistrate's Court, Angamaly, which has arisen from Crime No.752 of 2010 of the Angamaly Police Station for the offences under Section 20 read with Section 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

2. The prosecution was initiated based on the allegation that on 17.06.2010, the petitioner was found transporting river sand illegally collected without any permit, by a mini lorry. When the matter came up before the court below, it seems that the learned counsel for the petitioner has pointed out that the cognizance could not have been taken on the Final Report as the complaint was not made by a person

authorised in that behalf by the Government or by the District Collector or Geologist of the Department of Mining and Geology.

3. The court below has taken the view that the provisions of the Act was amended through Act 15 of 2013, thereby making a provision for filing the complaint by an officer referred to in Section 23 or by a Geologist of the Mining and Geology Department and further that the said amendment has retrospective effect from 25.11.2012. When the matter relates to a penal provision for filing a complaint, it has to be noted that even when retrospective operation is given in the statute, such a retrospective operation cannot be granted. Being a penal provision, the court below ought to have noted that any retrospective operation could not be given to such a complaint. The law applicable to the matter was one, which was in existence as on the date of incident. Matters being so, the prosecution is bad in law and therefore, all further proceedings in C.C.No.362 of 2015 based on Annexure A Final Report are liable to be quashed.

In the result, this Crl.M.C. is allowed and all further proceedings in C.C.No.362 of 2015 pending before the Judicial First Class Magistrate's Court, Angamaly, which has arisen from Crime No.752 of 2010 of the Angamaly Police Station, based on Annexure A Final Report are hereby quashed.

Sd/-

B. KEMAL PASHA
JUDGE

DSV/5/10/15

// True Copy //

P.A. To Judge