

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

Cr1.MC.No. 6318 of 2015 ()

CMP 825/2015 of JUDICIAL FIRST CLASS MAGISTRATE COURT,
TRIPUNITHURA
CRIME NO. 612/2015 OF UDAYAMPEROOR POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED :

SANDEEP, AGED 25 YEARS,
S/O. SATHEESAN, KOCHUMATHAKKARA HOUSE,
VAZHEEKKATTU DESOM, KULASEKHARAMANGALAM VILLAGE,
MARAVAMTHURUTHY PANCHAYATH, VAIKOM, KOTTAYAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT/COMPLAINANT:

1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM
THROUGH SUB INSPECTOR OF POLICE,
UDAYAMPEROOR IN CRIME NO.612/2015.

2. SUB INSPECTOR OF POLICE,
UDAYAMPEROOR POLICE STATION,
ERNAKULAM DISTRICT-682 307.

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 14-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 6318 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE 1 : COPY OF THE ORDER DTD.20.8.2015 IN CMP
NO.825/2015 IN CRIME NO.612/2015 OF UDAYAMPERUR POLICE STATION
PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT, TRIPUNITHURA.

RESPONDENTS' ANNEXURES:

NIL

// True Copy //

P.A. To Judge

DSV/17/10/15

[CR]

B.KEMAL PASHA, J.

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Crl.M.C. No. 6318 of 2015

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Dated this the 14th day of October, 2015

ORDER

In Crime No.612 of 2015 of the Udayamperur Police Station, registered for the offences punishable under Section 4(1)(A) read with Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act') and Rule 58 of Kerala Minor Mineral Concession Rules, 1967, the accused has approached the court below for getting the vehicle seized in the case, released under Section 451 Cr.P.C., through C.M.P.No.825 of 2015.

2. The court below, through Annexure-1 order dated 20.08.2015, dismissed C.M.P.No.825 of 2015 by entering a finding that the vehicle was seized by the District Collector as

per the said Act, and thereby directing the petitioner to approach the appropriate authority for getting the vehicle released.

3. As per Section 21(4) of the Act, such a vehicle involved in the offence shall be liable to be seized by an officer or authority specially empowered in that behalf. As per Section 21(4A) of the Act, such a vehicle shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-Section (1) and shall be disposed of in accordance with the directions of such court. In this case, the court below is the competent court to take cognizance of the offence under sub-Section (1) of Section 21 of the Act and, therefore, it is for the court below to enter a decision on the petition filed under Section 451 Cr.P.C. The court below has failed to exercise its jurisdiction and the power conferred on it and, therefore, Annexure-1 order has resulted in substantial miscarriage of justice.

In the result, this Crl.M.C. is allowed and Annexure-1 order

is quashed. The court below is directed to pass appropriate orders, in accordance with law, in C.M.P.No.825 of 2015, as expeditiously as possible, at any rate, within 15 days from the date of receipt of a copy of this order.

Sd/-

**B.KEMAL PASHA
JUDGE**

DSV/14/10/15

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P.A. To Judge