

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Cr1.MC.No. 6106 of 2014

IN C.C NO.1066/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT
-II, ALUVA

CRIME NO. 8/2002 OF KALAMASSERY POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED:

ABDUL SALIM, AGED 45 YEARS,
S/O. MUHAMMED ALI, KUDILINKAL HOUSE,
CHERANELLOOR P.O.
ERNAKULAM DISTRICT.

BY ADVS.SMT.R.LEELA
SMT.P.I.SHAMLATH

RESPONDENT/STATE AND DEFACTO COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA,
ERNAKULAM-682031.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 6106 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: A COPY OF THE FIR NO.8/2002 DATED 5.1.2002.

ANNEXURE A2: A COPY OF THE CHARGE SHEET NO. 109/2002 DATED
12.1.2002.

ANNEXURE A3: A COPY OF THE MAHAZAR DATED 5.1.2002 IN C.C
NO.1066/2014

ANNEXURE A4: A COPY OF THE BOND EXECUTED BY THE OWNER OF THE
VEHICLE.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.6106 of 2014

Dated this the 24th day of February, 2015

O R D E R

The petitioner herein is being prosecuted in C.C No.1066/2014 before the Judicial First Class Magistrate Court II, Aluva on the allegation that on 5.1.2002 he illicitly collected and removed sand from the river when there was ban imposed by this Court by judicial order. He was found transporting the sand illegally in the vehicle No.KL 01B 4066. The police intercepted the vehicle, seized the properties and arrested the petitioner. Now he is on bail. The trial court has also framed charge against him. Now he seeks orders under Section 482 of the Code of Criminal Procedure quashing the entire prosecution.

2. Of course, the police submitted final report under Section 188 and 379 of the Indian Penal Code. As regards the offence under Section 188 of the Indian Penal Code there is a bar of cognizance under the law. Still the prosecution can proceed under Section 379 of the Indian Penal Code. The FIR and the final report contains allegations under Section 379 of the Indian Penal Code. Let the trial court decide whether the

allegations will come under Section 379 of the Indian Penal Code. The petitioner will have to face trial before the learned Magistrate who as already framed charge against him. I find no reason or ground to quash the prosecution as such under Section 482 of the Code of Criminal Procedure.

In the result, this Criminal Miscellaneous Case is dismissed. The learned counsel for the petitioner makes a request for exemption from personal appearance. Of course he can very well approach the learned Magistrate for exemption from personal appearance. His application will be considered by the learned Magistrate.

**P.UBAID
JUDGE**

ab