

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

Crl.MC.No. 7373 of 2014

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AGAINST THE ORDER IN CC 1361/2014 of J.M.F.C.,KUTHUPARAMBA DATED  
CRIME NO. 399/2013 OF MALOOR POLICE STATION , KANNUR

PETITIONER:

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SHAFEEK C.M AGED 28 YEARS  
S/O.SHOUKATHALI, RAJENA MANZIL, 19TH MILE  
CHAVASSERY P.O, MATTANNUR VIA  
KANNUR DISTRICT. 670 702.

BY ADVS.SRI.E.C.BINEESH  
SMT.M.B.SHYNI

RESPONDENTS:

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1. STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM 682 031.
2. SUB INSPECTOR OF POLICE  
MALOOR POLICE STATION, KANNUR DISTRICT. 670 702.

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
11-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 7373 of 2014 ()

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APPENDIX

PETITIONER'S EXHIBITS

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ANNEXURE 1. COPY OF JUDGMENT DATED 13.1.14 OF THIS HONOURABLE COURT IN WPC 846/14.

ANNEXURE 2. COPY OF THE PROCEEDINGS BEFORE THE SUB DIVISIONAL MAGISTRATE, THALASSERY DATED 19.6.14.

ANNEXURE 3. COPY OF THE RELEASING ORDER NO.G.1066/14 PASSED BY THE LEARNED SUB DIVISIONAL MAGISTRATE COURT, THALASSERY.

ANNEXURE 4. COPY OF THE CHARGE SHEET IN CRIME NO.399/13 OF MALOOR POLICE STATION.

RESPONDENTS' EXHIBITS

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NIL

/TRUE COPY/

P.A. TO JUDGE

SJ

**P. UBAID, J.**

**= = = = =**

**Crl.M.C. No.7373 of 2014**

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**Dated this the 11<sup>th</sup> day of February, 2015**

**ORDER**

The petitioner herein seeks orders quashing the prosecution against him in C.C.No.1361/2014 of Judicial First Class Magistrate Court, Koothuparamba, brought under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Sand Act). The police registered a crime against the petitioner on the allegation that he was found transporting river sand illegally. During investigation, report of examination revealed that it is not river sand. In such a situation the Executive Magistrate allowed composition of the offence under the MMDR Act. The petitioner has also remitted the amount of penalty imposed by the Executive Magistrate. However, prosecution happened to be filed in Court by the Station House Officer. Instead of filing a complaint, the Sub Inspector filed final report under Section 173(2) Cr.P.C. There is clear bar of cognizance under the Sand Act that cognizance is possible only on a complaint made by the authorised officer. Cognizance on a

final report under Section 173 Cr.P.C is barred. Even otherwise, the prosecution is liable to be quashed because the sand is not river sand, and the possible prosecution under the MMDR Act stands compounded also. In such a situation the prosecution is liable to be quashed.

In the result, this petition is allowed. The prosecution against the petitioner in C.C.No.1361/2014 of the Judicial First Class Magistrate Court, Koothuparamba will stand quashed under Section 482 Cr.P.C. Accordingly, the Crl.M.C will stand allowed and bailable bond, if any, executed by the petitioner will stand discharged.

**P. UBAID, JUDGE**

sj