

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

Cr1.MC.No. 7382 of 2014

CRIME NO. 400/2014 OF KODUVALLY POLICE STATION, KOZHIKODE

PETITIONER:

MOOSA, AGED 62 YEARS,
S/O.ABOOBACKER, NADUVILAKANDI HOUSE,
KIZHAKOTH AMSOM,
KACHERIMUKKU.

BY ADV. SMT.T.V.NEEMA

RESPONDENTS:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
(SHO KODUVALLY POLICE STATION)
HIGH COURT OF KERALA,
ERNAKULAM 682 031.

BY PUBLIC PROSECUTOR SMT.S. HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 7382 of 2014

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1. COPY OF THE FIR DATED 03.11.14.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.7382 of 2014

Dated this the 24th day of March, 2015

O R D E R

The petitioner herein seeks orders quashing the FIR in Crime No.400/2014 of the Koduvally Police Station, registered under Sections 20 and 21 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act (for short 'the Sand Act'). During investigation, the police incorporated Section 379 of the Indian Penal Code also, on the allegation that the petitioner removed sand illicitly, without the knowledge and permission of the person having custody of the same. The petitioner seeks orders on two grounds. One is that Section 379 of IPC was wrongly and illegally incorporated during the proceeding by the police, and the other is that cognizance under the provisions of the Sand Act is not possible except on a complaint in writing by an authorised officer. As regards the first ground, I am not inclined to make any comments because the police has already incorporated Section 379 IPC, and the Court will decide later whether such a prosecution is possible. If

the essentials of such an offence are there the court can very well proceed under Section 379 of IPC. If such essentials are not there, the trial court will not take cognizance under that section, or the petitioner can even make an application for discharge during trial. As regards the other ground, this Court finds that this is not the right stage to go into that aspect. Cognizance can be taken only when a final report comes, or a complaint as prescribed under the law comes. Now the crime is under investigation. There is no question of deciding on the question of cognizance at this stage. Even otherwise, the contention is unsustainable because after the amendment to the Kerala Sand Act, cognizance is possible even on a police report. The pre-amendment position was that cognizance could be made only on a complaint made in writing by the authorised officer. Now the position stands changed. The police can very well submit final report under Section 173(2) of the Code of Criminal Procedure in view of the amended provisions in the Sand Act. I find that this Criminal Miscellaneous Case does not deserve consideration at this stage. If the petitioner is aggrieved by the final report submitted by the police, he can very well pursue appropriate proceedings under the Code of Criminal Procedure as regards

the final report.

In the result, this Criminal Miscellaneous Case is dismissed in limine without being admitted to files.

**P.UBAID
JUDGE**

ab