

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

OP(Cr1.) .No. 128 of 2015 (Q)

PETITIONER/PETITIONER:

SHARAFUDHEEN, AGED 35 YEARS,
S/O.ALI, KUNNATHU HOUSE, THIRURKAD.P.O,
ANGADIPPURAM, PERINTHALMANNA,
MALAPPURAM DISTRICT (OWNER OF A TIPPER LORRY BEARING
REGISTRATION NO.KL-53-D-5294)

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT/RESPONDENT:

THE SUB INSPECTOR OF POLICE,
PERINTHALMANNA POLICE STATION, MALAPPURAM DISTRICT
PIN-672303.

BY PUBLIC PROSECUTOR SMT.MADHUBEN

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Crl.).No. 128 of 2015 (Q)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE MAHASSAR DATED 29.01.2015 PREPARED BY THE
RESPONDENT.

EXT.P2 TRUE COPY OF THE CASH MEMORANDUM DATED 29.1.2015 ISSUED BY THE
DEPARTMENT OF MININNG AND GEOLOGY AS PROVIDED UNDER THE KERALA MINOR
MINERAL CONCESSION RULES 1967.

EXT.P3 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED
20.2.2015 IN WP(C)5475/2015.

EXT.P4 TRUE COPY OF THE C.M.P.966/2015 DATED 18.3.2015 SUBMITTED BY
THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-
II, PERINTHALMANNA.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S TO JUDGE

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K. RAMAKRISHNAN, J.

.....
O.P.(Crl.)128 of 2015
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Dated this the 24th day of April, 2015.

JUDGMENT

This original petition is filed by the petitioner under Article 227 of the Constitution of India seeking a direction for disposal of the application for release of the vehicle pending before the Judicial First Class Magistrate Court-I, Perinthalmanna.

2. It is alleged in the petition that petitioner is the owner of the vehicle KL 53-D-5294 and petitioner's vehicle has been seized by the respondent on 29.1.2015 with the allegation that he had used the vehicle for transport of granite building stones without Form-P as provided under Rule 48 K of the Kerala Minor Mineral Concession Rules, 1967 and seized the vehicle as per Ext.P1 mahazer. The vehicle was not produced before the concerned Magistrate Court. So the petitioner moved this Court for that purpose and as per Ext.P3 order in WP(C) No.5475/2015, the Station House Officer was directed to produce the vehicle before the Magistrate having jurisdiction within time bound manner and disposed of the petition.

Thereafter, he filed C.M.P.No.966/2015 before the Judicial First Class Magistrate Court-I, Perinthalmanna for release of the vehicle. But that court has not passed any order in that application. So, the petitioner has no other remedy except to approach this Court seeking the following reliefs:

1. issue an order or direction, directing the Judicial First Class Magistrate Court-II, Perinthalmanna to consider and dispose of Ext.P4 application submitted by the petitioner within a reasonable time as fixed by this Court.

2. to release the vehicle of petitioner bearing registration No.KL-53-D-5294 on whatever condition this Court may deem fit and proper in the interest of justice and circumstances of the case.

3. issue such other orders or directions, which this Court may deem fit and proper in the interest of justice and circumstances of the case.

3. On the basis of the allegations in the petition, this Court has called for a report from the concerned Magistrate and the learned Magistrate has sent a report, which reads as follows:

“CMP966/2015 of this Court is a petition u/s.457 of

Cr.P.C, filed on 18.3.2015 in which the Sub Inspector of Police, Perinthalmanna and the Revenue Divisional Officer, Perinthalmanna are cited as respondents.

The vehicle bearing Registration No.KL 53 D 5294 was allegedly seized on the allegation of illegal transportation of granite stone on 29.1.2015. A complaint has been filed u/s.4(1)(A) r/w 21 of MMDR Act.

In the CMP 966/2015, RDO, Perinthalmanna has been cited as second respondent. Hence this Court first posted the case to 25.3.2015 for report. But no report was filed by the R.D.O and the S.H.O concerned.

Anticipating procedural delay in getting report from the R.D.O and with a view to avoid heavy postings in this Court, this Court posted the case to 24.4.2015. In these types of cases long delay used to occur in getting report from R.D.O and other authorities. However, as and when report is received from the R.D.O, at the registry of the Court, the case would be used to be advanced either on the petition of the petitioner's counsel or suo moto, after notice to the counsel concerned and used to pass appropriate orders forthwith.

Now this case stands posted to 24.4.2015. A reminder has been issued to R.D.O. The petition will be disposed off at the earliest on getting reports from the R.D.O and the S.H.O. The petitioner in his petition has alleged that he was transporting granite stone on the strength of permit. But

petitioner has not produced the permit before this Court till date.”

4. Heard the counsel for the petitioner and the learned Public Prosecutor.

5. The only grievance of the petitioner is that court below is not disposing the application. It is seen from the report that a report has been called for from the RDO, Perinthalmanna and also from the Station House Officer. Since there is no report obtained from the RDO and the Station House Officer, the case was posted to 24.4.2015. In the decision reported in **Sunderlal Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638), the Hon'ble Supreme Court has held that application under section 451 or section 457 for interim custody of the vehicle has to be considered and disposed of at the earliest possible time, otherwise it will cause damage to the vehicle. However, considering the circumstances, this Court feels that this petition can be disposed of as follows:

RDO, Perinthalmanna is directed to file his report within one week from the date of receipt of a copy of this order and on filing such report, the learned Magistrate is directed to dispose of the petition within two weeks from the date of

production of that report.

Public Prosecutor is directed to instruct the RDO and the Station House Officer concerned to submit the reports called for by the Magistrate as directed by this Court.

With the above directions and observations, this petition is disposed of.

Office is directed to communicate a copy of this order to the concerned RDO, Station House Officer and the court immediately by fax.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

