IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WA.NO. 1249 OF 2015 () IN WP(C).3840/2012

AGAINST THE ORDER/JUDGMENT IN WP(C) 3840/2012
OF HIGH COURT OF KERALA DATED 22.01.2015

APPELLANT(S)/RESPONDENTS:
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1. THE SUB DIVISIONAL MAGISTRATE
REVENUE DIVISIONAL OFFICER, THRISSUR -680 003.

2. SUB INSPECTOR OF POLICE
CHERUTHURUTHY POLICE STATION
CHERUTHURUTHY P.OTHRISSUR DISTRICT - 679 531.

BY GOVERNMENT PLEADER SHIR P.I. DAVIS

RESPONDENT(S)/PETITIONER:

PRATHEESHKUMAR V.V.
VELUR VADAKKUMURY HOUSE
THIRUMUTTAKODE P.O.PALAKKAD DISTRICT 678 533.

R BY SRI.SHOBY K.FRANCIS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18.06.2015, THE COURT ON 10-07-2015 DELIVERED THE FOLLOWING:

"C.R"

ASHOK BHUSHAN, C.J.
and
A.M. SHAFFIQUE, J.

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W.A. No.1249 of 2015

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Dated this the 10th day of July, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Appeal has been filed against the judgment dated 22.01.2015 in W.P(C) No.3840 of 2012. By the judgment dated 22.01.2015, the learned Single Judge has allowed the Writ Petition filed by the petitioner setting aside Ext.P1 order issued by the Revenue Divisional Officer/Sub Divisional Magistrate in so far as imposition of fine of Rs.25,000/- is concerned. The learned Single Judge held that the RDO/SDM is incompetent to impose fine under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as the " the 2001 Act").

2. Brief facts giving rise to the Writ Petition are:

Petitioner's tipper lorry bearing Reg.No.KL-08/E-6174 was seized by the Sub Inspector of Police on 28.09.2011 alleging illegal transportation of river sand. Petitioner moved an application dated 29.09.2011 before the RDO/SDM to get interim custody of the vehicle and when no action was taken, filed W.P(C) No.6455 of 2011. This Court vide judgment dated 04.10.2011 directed the 1st respondent to pass orders on the application for interim custody within seven days. The RDO/SDM issued an order dated 09.11.2011 directing the petitioner to deposit the assessed value of Rs.35,000/- plus fine of Rs.25,000/- within seven days. The 1st respondent again issued an order dated 03.02.2012 asking the petitioner to deposit Rs.35,000/- as value of the vehicle plus Rs.25,000/- imposed as per order dated 09.11.2011 within seven days, failing which the vehicle will be auctioned under Rule 28 of the Kerala Protection of River Banks and Regulation of

Removal of Sand Rules, 2002 (hereinafter referred to as the " the 2002 Rules") Petitioner filed W.P(C) No.3840 of 2012 challenging Ext.P1, i.e., order dated 03.02.2012. Petitioner challenged Ext.P1 in so far as it directed the petitioner to remit fine of Rs.25,000/-. Subsequently, petitioner deposited Rs.60,000/- on 02.03.2012 and the vehicle was released vide letter dated 03.03.2012 of the 1st respondent. Petitioner in the Writ Petition claimed for the following reliefs:

> *(i) Issue a writ of Certiorari quashing that portion of Exhibit P1 which direct the petitioner to remit Fine amount of Rs.25,000/-.*
>
> *(ii) Issue a writ of mandamus directing the 1st respondent to release the vehicle bearing Reg.No.KL-08/E-6174 to the petitioner on payment of the value of the vehicle mentioned in Ext.P1 without insisting for the remittance of the fine amount.*
>
> *(iii) Declare that the 1st respondent has no authority to impose fine amount under the River Sand Act, 2001, while passing final confiscation orders."*

3. Learned Single Judge allowed the Writ Petition quashing Ext.P1 order imposing fine of Rs.25,000/-. In

paragraph 6 of the judgment the learned Single Judge gave the reasons for allowing the Writ Petition which is quoted below:

> "*The only challenge against Ext.P1 is regarding the imposition of fine of 25,000/-. As rightly pointed out by the learned counsel for the petitioner, the Revenue Divisional Officer is incompetent to impose fine under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. This position has been reiterated by this Court in a series of decision.*"

State has filed the Writ Appeal against the judgment of the learned Single Judge.

4. Learned Senior Government Pleader in support of the appeal contended that the RDO/SDM has jurisdiction to impose fine under Rule 27 of the 2002 Rules. It is submitted that at the time of conviction under Section 20 fine can be imposed but fine can also be imposed while returning the vehicle as per Rule 27 of the Rules. It is submitted that submission of the petitioner that fine cannot be imposed by the RDO/SDM

and it can be imposed only by court trying the offence is not correct. The power to impose fine is an additional provision made in the 2002 Rules in addition to the provision for imposition of fine as contained in the 2001 Act.

5. Learned counsel for the respondent-petitioner refuting the submissions of the learned Government Pleader submitted that the RDO/SDM was not competent to impose any fine. It is submitted that fine can be imposed only by a court trying an offence under the Act. In support of the submission learned counsel relied on the Division Bench decision of this Court decided on 17.06.2002 in W.A. No.1286 of 2002 (**Vahid v. The Sub Collector, Adoor and Others**) along with O.P. No.13372 of 2002, W.A. No.1287 of 2002, O.P. No.13353 of 2002, W.A. No.1330 of 2002 and O.P. No.9621 of 2002. He has also placed reliance on the decision of the learned Single Judge in W.P(C) No.11696 of 2008

(**Mohammed Shereef v. District Collector, Malappuram and Others**) decided on 24.06.2011.

6. We have considered the submissions of learned counsel for the parties and perused records.

7. The only issue which has arisen for consideration in this Writ Appeal is as to whether the RDO/SDM has jurisdiction to impose fine while returning/releasing the vehicle seized on the allegation of illegal removal of river sand. For answering the said issue, the provisions of the 2001 Act and 2002 Rules are first to be noted.

8. The 2001 Act was enacted to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand and for matters connected therewith or incidental thereto. The Act was amended from time to time. Chapter V of the Act deals with offences and penalties. Section 20 of

the 2001 Act is quoted as follows:

> "20. ***Penalty for contravention of this Act***.-- *Whoever contravenes any of the provisions of this Act or rules made thereunder shall, on conviction be punished with imprisonment for a term of which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both and in case of continuing contravention with an additional fine which may extend to one thousand rupees for every day during which such contravention continues."*

Section 23 deals with "seizure of vehicle, loading equipments, tools, etc." It is relevant to note that prior to amendment of Section 23 by Act 15 of 2013, heading of the Section was "confiscation of vehicles". Section 23A deals with Confiscation of sand, vehicles, etc. Sections 23 and 23A which are relevant for the present case are quoted below:

> *"23.* ***Seizure of vehicle, loading equipment, tools, etc***.- *Where any person removes sand from any Kadavu or transport sand there from without complying with the provisions of this Act or the rules made thereunder, the tools, equipments, loading equipments, vehicles and other articles used or intended to be used for such activities, including sand, shall be seized by an officer not below the rank of a*

Village Officer of the Revenue Department or a Police Officer not below the rank of a Station House Officer or a member of the Special Protection Force.”

23A. ***Confiscation of sand, vehicles, etc****.- (1) Where any property is seized under Section 23, the officer seizing such property shall seal all properties for indicating that the same is seized and shall, whether prosecution proceedings have been initiated or not, within forty eight hours of such seizure make a report of such seizure before the judicial Magistrate and before the Sub Divisional Magistrate having jurisdiction over the area from where the said properties are seized and the fact of such seizure shall be informed to the Station House Officer of the Police Station, having jurisdiction over the area. Where information regarding such seizure of property is received, the Police Officer concerned shall take steps under Section 102 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).*

(2) Where a report under sub-section (1) is received before the Judicial Magistrate having jurisdiction, steps thereon, no contrary to the other provisions of this Act, shall be taken as per the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and, if no claim is raised regarding the articles seized or where the Court is satisfied that the application to release them is not satisfactory, they shall be subjected to confiscation under sub-section (4):

Provided that the release of the properties seized to any person, for its safe custody, to any person or its disposal, *shall be on sufficient security and such release or disposal shall only be till the completion of the confiscation proceedings under this Act:*

Provided further that the sand seized shall not, for any reason, be released to any person and the same shall be subjected to confiscation under sub-section (4).

(3) Where a report under sub-section (1) is received before a Sub Divisional Magistrate, a notice requiring to furnish in writing within the stipulated time as stated in the notice, the reasons, if any, for not confiscating the property seized under Section 23, shall be issued to the owner of, or the person having control of, the vehicle, tool, implements, loading equipment, or other article.

(4) Where the owner of the properties seized or the person having control of the same does not furnish explanation or the explanation given is not satisfactory, and the Sub-Divisional Magistrate is satisfied that the properties seized under Section 23 are to be confiscated, he shall, by an order, confiscate the same and the fact shall be informed in writing to its owner or the person having its control:

Provided that the owner of the properties seized or the person having its control shall be given the liberty to reclaim it, except sand, by remitting an amount equal to the value of the confiscated articles, as fixed by the Collector in lieu of the properties confiscated:

Provided further that the sand confiscated shall not for any reason, be released by realizing the value.

(5) The amount received under sub-section (4)

shall, subject to the provisions of Section 23D, be remitted to the River Management Fund.

(6) The sand confiscated under sub-section (4) shall be sold to the Nirmithi Kendra or to 'Kalavara' at such rate, as may be fixed by the Public Works Department from time to time and such amount shall be remitted to the River Management Fund.

(7) The confiscation under this section shall be in addition to the penalty provided for the offence under this Act."

Section 25 provides for cognizance of offences. Section 25(1) provides that "the Court having jurisdiction may, upon a written complaint by an officer referred to in Section 23 or of a Geologist of the Mining and Geology Department or upon a police report under sub-section (2) of Section 173 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), constituting an offence under this Act, take cognizance of such offence."

9. The 2002 Rules have been framed in exercise of the powers under Section 26 of the 2001 Act. The 2002 Rules have been published under Notification

dated 04.06.2003. Rule 22 contemplate river management fund. Rule 22(1) and (2) are quoted below:

> *“**22. River Management Fund.-** (1) The District Collector shall constitute a fund called "River Management Fund" to meet all necessary expenses towards management of kadavu or river bank and implementation of River Development Plan and the same shall be utilized and spent under the provisions of the Act and these Rules.*
>
> *(2) The River Management Fund shall consist of the following components, namely:-*
>
> *(a) fifty per cent of the amount collected by the Local Self Government Institutions through sale of sand under sub-section (2) of section 17 of the Act.*
>
> *(b) grants given by Government to implement River Bank Development Plan framed under provisions of the Act;*
>
> *(c) money obtained by donations or contributions from public or from non-governmental agencies;*
>
> *(d) all penalties imposed under the provisions of the Act or these Rules;*
>
> *(e) the amounts to be transferred under section 19 and the amount due to the fund prior to the enforcement of this Act.”*

The two important Rules which are relevant for consideration in the present case are Rules 27 and 28.

Rule 27 contains the heading “Procedure for confiscation of vehicles”. Rule 28 deals with sale of the vehicle seized. Rules 27 and 28 are quoted as follows:

> ***“27. Procedure for confiscation of vehicle. -*** *(1) The Police or Revenue officials shall seize the vehicle used for transporting sand in violation of the provisions of the Act and these Rules.*
>
> *(2) In the case of seizure of vehicle under sub-section (1), a mahazar shall be prepared in the presence of two witnesses regarding the vehicle and one copy of the same shall be given to the person possessing the vehicle at the time of seizure and on copy to the District Collector.*
>
> *(3) The vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District Collector with fine within seven days of seizure.*
>
> ***28. Sale of the vehicle seized.-****(1) The District Collector shall consider every objection submitted within seven days of seizure of any vehicle under rule 27 and the decision of District Collector thereon shall be final.*
>
> *(2) In the case of sale of the vehicle under sub-section (1), if the fine and amount under sub-section (3) of section 27 of these rules has not been remitted, the District Collector shall sell the vehicle by auction.*
>
> *(3) The amount received from auction under sub-section (2) shall be credited to the River Management Fund after deducting the expenditure of auction.”*

Section 23 of the Act as quoted above deals with seizure of vehicle, loading equipments, tools, etc. Power to seize vehicle and other articles can be exercised by an Officer not below the rank of a Village Officer of the Revenue Department or a Police Officer not below the rank of a Station House Officer or a member of the Special Protection Force. After seizure, Section 23A deals with confiscation of sand, vehicles, etc. Section 23A(1) mandates sending of seizure report to the Judicial Magistrate and Sub Divisional Magistrate having jurisdiction over the area. Sub-section (2) of Section 23A deals with procedure to be undertaken by the Judicial Magistrate on receipt of the report. The Judicial Magistrate in exercise of the power can release the vehicle or the application being not satisfactory, the same can be subjected to confiscation under sub-section (4) of Section 23A. Sub-section (3) of Section 23A provides that after receipt of the report by the Sub

Divisional Magistrate, a notice shall be issued to be owner stating reasons, if any, for not confiscating the property. Sub-section (4) of Section 23A provides that when explanation is not furnished or it is not satisfactory, the Sub Divisional Magistrate shall confiscate the vehicle or the article. The two proviso to sub-section (4) which are relevant, are as follows:

> "*Provided that the owner of the properties seized or the person having its control shall be given the liberty to reclaim it, except sand, by remitting an amount equal to the value of the confiscated articles, as fixed by the Collector in lieu of the properties confiscated.*
>
> *Provided further that the sand confiscated shall not for any reason, be released by realizing the value.*"

From above scheme under the 2001 Act, it is clear that there are two provisions for confiscation, firstly, on prosecution for contravention of the provisions of the Act by the court wherein punishment of imprisonment for a term of which may extend to two years or with fine which may extend to twenty five thousand rupees or with both and in case of continuing contravention with an additional fine which may extend to one thousand rupees for every day during which such contravention continues can be imposed. Secondly, under sub-section (4) of Section 23A confiscation can be ordered. Sub-section (4) of Section 23A contains a proviso that the owner shall be given liberty to reclaim it by remitting an amount equal to the value of the confiscated articles as fixed by the Collector in lieu of the properties confiscated. The provision would indicate that imposition of fine is contemplated under Section 20, but at the time of confiscation by the Sub Divisional Magistrate no fine is contemplated. Sub-section (7) of Section 23A however contemplate that confiscation under Section 23A shall be in addition to the penalty provided for the offence under the Act.

10. Provisions of the Act and Rules indicate that there is no provision for interim release of the vehicle

except under the provisions of the Code of Criminal Procedure read with Section 23A(2) which could be exercised by the Judicial Magistrate. In **Ayoob v. Sub Inspector of Police** (2010 [3] KLT 116) it was held that conditional release can be ordered on payment of Rs.25,000/-.

11. Now we come to Rule 27 of the Rules. Rule 27 although contains the heading "Procedure for confiscation of vehicles" provisions of sub-rules (1), (2) and (3) does not deal with the procedure for confiscation of vehicles, rather sub-rule (1) provides for seizure of vehicle by Police or Revenue Officials used for transporting sand in violation of the Act. Sub-rule (2) provides that in the case of seizure under sub-rule (1), a mahazar shall be prepared. Sub-rule (3) which is important provides as follows:

> *"(3) The vehicle may be returned if the owner of the vehicle or the possessor remits an amount towards River Management Fund equal to the price fixed by the District*

Collector with fine within seven days of seizure."

Sub-rule(3) of Rule 27 is an independent provision from the provision of punishment of conviction and confiscation of vehicle. Section 20 and sub-rule (3) of Rule 27 uses the word 'fine'. The word fine means a pecuniary criminal punishment imposed by the court, upon a person convicted for a crime. The word fine however is also used in the nature of penalty for civil liability. It is useful to quote one of the definitions of the word "fine" given in Black's Law Dictionary which is quoted below:

"The word fine means a 'pecuniary criminal punishment or civil penalty payable to the public treasury."

12. The word fine used under Section 20 of the 2001 Act is a fine consequent to conviction of an offence whereas fine used under Rue 27(3) is the fine for return of the vehicle. The submission which has been pressed in the Writ Petition is that fine can be imposed only by court of law, i.e., on conviction under Section 20. The

Division Bench judgment which has been relied on by the learned counsel for the petitioner was a case where the RDO imposed a fine of Rs.25,000/- for release of the lorries. In some of the Writ Appeals orders were passed by the Tahsildar under the Mines and Mineral Regulation Act 1960 read with Kerala Minor Mineral Concession Rules 1967. Provisions of the 2001 Act came to be considered. Section 23 of the 2001 Act which contains a heading "confiscation" at the relevant time was considered. Dealing with the Kerala Minor Mineral Concession Rules, 1967, the court held that there is no provision for imposition of fine except by compounding and there was no case of compounding in the said case. The following was observed in paragraph 4:

> *"4. The Kerala Minor Minerals Concession Rules, 1967 (hereinafter referred to as 'K.M.C. Rules'). Rule 58(1) provides that contravention of any provision of the rules shall be punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to*

twentyfive thousand ruppe or with both. Rule 59 provides that no court shall take cognizance of any offence punishable under these rules, except upon complaint in writing made by a person authorised in this behalf by the State Government or the competent authority. Rule 60A provides for compounding of offences before or after the initiation of the prosecution. The provisions of Section 21(1), 22 and 23A of the Mines & Minerals (Development & Regulation) Act are similarly worded as the present rules to which we have referred. A reading of the relevant provisions of the aforesaid Act and the K.M.M.C. Rules suggests that neither the Revenue nor the Police authorities have the power to impose any fine on a person who contravenes the provisions of the rules. Any person who extracts and transports any minor mineral as defined under Section 3 of the Act, 1957 without appropriate permission from the concerned authority is deemed to commit an offence. We do not see any provision in the Act or Rules empowering anyone other than a court of law to take cognizance of an offence punishable under the Act and the Rules upon a complaint by the appropriate person. We are, therefore, of the view that the order at Ext.P4 made by the first respondent in W.A. No.1330 of 2002 is without jurisdiction. Rule 60A of the K.M.M.C. Rules merely enables the concerned revenue officer to compound an offence before prosecution is instituted for infractions of the rules. Compounding necessarily means that the person desirous to compound it admits his liability. In the present case,

> *there is no material to suggest that the appellant admit his liability or that there was any request made by the appellant for compounding the offence. Even before us, the learned counsel appearing for the appellant states that he is willing to take his chance of prosecution before the court of law."*

Dealing with the provisions of the 2001 Act, the court considered Sections 20 and 23 and Rule 27 as then existed. The following was observed in paragraphs 5 and 6:

> *"5. Turning to the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Act 18 of 2001), we notice that the provisions are almost the same. Any person who removes sand without permission from the appropriate authority is deemed to commit an offence. Section 20 of Act 18 of 2001 provides that contravention of any of the provisions of this Act or Rules shall be punishable with imprisonment for a term which may extend to, two years or with fine which may extend to twenty five thousand rupees or with both. Section 22 provides that nothing in the Act shall prevent any person from being prosecuted under any other law for the time being in force for any act or omission made punishable under the Act. Section 23 deals with confiscation of vehicles and provides that whoever transports sand without complying with the provisions of this Act shall be liable to be punished and the vehicle used for the transportation is*

liable for seizure by the Police or Revenue officials (unfortunately the English copy of the Act published in the gazette uses the word 'seizure' though the caption of Section 23 is 'confiscation of vehicles'. Section 23 in the Malayalam version uses the word 'kandukettal', which means 'confiscation'. It is time that the State Government looks into the matter of accurate translation of Acts in English for the benefit of the Judges who are required to interpret them in the High Court and whose knowledge is Malayalam may be nil or limited). Rule 27 of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2001 (Malayalam version) specifically provides for confiscation of the vehicles. The Rules empower the District Collector to take action for confiscation of the vehicles after following the procedure prescribed therein (English copy of the Rules is not made available to the court).

6. Thus, it would appear to us that, whether the action is taken under the K.M.M.C. Rules read with the parent Act or under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 read with the Rules made thereunder, the power of imposition of fine rests only with the Court. All that the Revenue authorities have been empowered to do is to compound the offence. The three appellants deny that they admitted the liability and they are not willing to compound the offence. In order to avoid controversy, it is preferable that the competent authority gets an application in writing from the accused person for compounding the offence."

The Division Bench quashed the orders imposing fine for the reasons given therein. It is relevant to note that the said judgment was delivered by the Division Bench on 17.06.2002. On the day when the Division Bench delivered the judgment, Rules 2002 was not in force since the 2002 Rules were enforced by publication in the Gazette on 04.06.2003. The Division Bench has referred to Rules 2001 as has been referred in paragraph 5 of the judgment. Rule 27 as now brought in the statute book by 2002 Rules has not come into existence at the time when the Division Bench delivered the judgment on 17.06.2002. Thus the said judgment was rendered with reference to the statutory provision as in existence at the relevant time. The Division Bench did not consider Rule 27 as it exists now. Thus the said Division Bench judgment cannot be relevant for interpretation of Rule 27 as has been brought by the 2002 Rules.

13. The judgment of the learned Single Judge in **Mohammed Shereef** (supra) was a judgment following the above Division Bench judgment in W.A. No.1330 of 2002 and connected cases (supra).

14. A learned Single Judge had considered provisions of the 2001 Act and 2002 Rules in **Ahammed Kutty v. State of Kerala** (2008 [1] KLT 1068). Criminal Miscellaneous Case was filed by owners of mini lorries which have been seized by the Tahsildar for allegedly transporting river sand illegally. Petitioners moved the Magistrate concerned under Section 457 of the Code of Criminal Procedure for interim custody which were rejected, against the said order, the Crl.M.C. was filed. Learned Single Judge noticed the provisions of the Act and those of Rules 27 and 28. In paragraph 8, the learned Single Judge observed that successful prosecution for an offence under the Act is sine qua non for the confiscation of the vehicle involved.

Referring to Rules 27 and 28 it was observed that such provision is not only not sensible but also unworkable. The following was observed in paragraph 8:

> *"8. In the first place, these rules do not prescribe any fair procedure for adjudication of the rights of the owner of the sand as well as vehicle. It is only if the vehicle seized is found to be involved in the commission of an offence punishable under the Act, can it be said that it is liable for confiscation under S.23 of the Sand Act. Going by the said provision, a successful prosecution for an offence under the Act is the sine qua non for confiscation of the vehicle involved. Such a provision is not only not sensible but also unworkable. The question as to whether an offence has been committed involving the vehicle and the person concerned is liable to be punished, is one which the competent Criminal Court alone can decide in a prosecution properly launched. It will, therefore, be inadvisable if not hazardous to entrust that duty with the seizing Police or Revenue Officer or the District Collector."*

15. Amendments were made in Section 23 of the 2001 Act subsequent to the judgment by which Sections 23A, 23B and 23C were added. Hence the above observation that successful prosecution for an offence under the Act is sine qua non for confiscation cannot

be held to be applicable now as per the amended provisions of the 2001 Act. In paragraph 9 of the judgment the learned Single Judge noticed Rule 27(3) which provided that owner or possessor of the vehicle shall remit an amount towards the River Management Fund equal to the price fixed by the Collector with fine within seven days. Following was observed in paragraph 9:

> *"9. Neither the Sand Act nor the Rules contains a provision enjoining the Police or the Revenue Officer seizing the vehicle, to produce the same before the District Collector. Secondly, all that R.27(3) states is that the owner or possessor of the vehicle shall remit an amount towards the River Management Fund equal to the price fixed by the District Collector with fine within 7 days of seizure. The Act or the Rules do not ensure that the vehicle, soon after its seizure, shall be placed in the custody of the District Collector so as to enable the owner or possessor to exercise his right under sub-rule 3 of R.27 within 7 days of seizure. That apart, if the sand in a given case is transported legally and not in contravention of the provisions of the Sand Act, why should the owner remit the price of the vehicle to anybody at all? Except giving the District Collector a right to consider objections, there is no corresponding*

right given by R.28(1) either to the owner or to the possessor of the vehicle to file objections. There is also no provision enumerating the defences which are available to such owner or possessor. The nature of the decision which can be arrived at by the District Collector under sub-rule 1 of R.28 is also not indicated. It is not discernible as to whether the District Collector can refuse to order confiscation under the said sub-rule. It only states that the decision of the District Collector shall be final. The scheme under R.27 and R.28 do not provide for any appeal or revision from the decision of the District Collector. Similarly, the said rules do not provide for any guidelines to the District Collector for fixing the price of the vehicle. What is still more atrocious is the power given to the District Collector under R.27(3) to recover the price of the vehicle with fine within 7 days of seizure. Except S.20 of the Act which prescribes a maximum fine of Rs.25,000/-, there is no other provisions either in the Act or in the Rules giving any authority to the District Collector to recover any amounts by way of fine or compounding fee. So, it should be inferred that the fine which is contemplated under R.27(3) is the fine which is referred to in S.20 of the Act. Under S.20 it is for the competent Criminal Court to impose the appropriate quantum of fine, having regard to the facts and circumstances of each and every case and Rs.25,000/- is the maximum fine imposable under S.20. The District Collector could not have been invested with a power to recover such fine which could be imposed only by the *competent Criminal Court trying an offence under S.20 of the Act."*

Observations were also made in the paragraph that the Rules do not provide for guidelines to the Collector for confiscating the vehicle. It is relevant to note that price which has been referred to in Rule 27 is the same which has been referred to in Section 23A of the Act. However, in view of the fact that Rules 27 and 28 are not under challenge in the Writ Petition and Writ Appeal, it is unnecessary for us to consider as to whether appropriate guidelines for the Collector are there or not.

16. A Full Bench of this Court had occasion to consider the question of interim custody of the vehicle under the 2001 Act in **Shan v. State of Kerala** (2010 [3] KLT 413 (F.B.). In the above case, the Full Bench had disapproved the Division Bench judgment where the Division Bench had held that on deposit of Rs.25,000/- interim custody be given to the owner. The following was observed in paragraph 9:

> *"9. We regret our inability to accept the submission made by the learned counsel for the petitioner for the grant of interim custody of a vehicle which is allegedly involved in the contravention of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 on condition that the owner remits an amount of Rs.25,000/- pending the confiscation proceedings. In our opinion such a view canvassed by the petitioners supported by the Division Bench of this Court in Writ Appeal No. 499 of 2010 is not in tune with the two decisions of the Supreme Court referred to above. Apart from that S.20 only prescribes the penalty for the contravention of the provisions of the Act to be imposed on the violator of the law. The vehicle which is used for commission of a contravention of the Act is dealt with separately under S.23 and the law specifically provided for confiscation of such vehicle."*

The Full Bench has further laid down that while making order of custody of the vehicle, the court will not only take into consideration the interest of the owner of the vehicle but also the interest of the State, the object of the legislation and larger public interest which is sought to be achieved by the confiscation of the vehicle. The full value of the vehicle must be safeguarded before directing the State to part with the custody of the vehicle in favour of the owner. Paragraph 10 is quoted below:

> *"10. Eventually if the vehicle is confiscated, the owner of the vehicle would lose the entire value of the vehicle. It is a different matter in a given case, the vehicle may be liable for confiscation or not depending upon the evidence in that case. While making an order for interim custody of the vehicle in favour of the owner, against whom proceedings for confiscation of the vehicle are pending, the Court will not only take into consideration the interest of the owner of the vehicle, but also the interest of the State, the object of the legislation and larger public interest which is sought to be achieved by the confiscation of the vehicle. The full value of the vehicle must be safeguarded before directing the State to part with the custody of the vehicle in favour of the owner. The very fact that the Legislature of Kerala thought it fit to bring in a special legislation to prevent indiscriminate excavation of sand from the river banks indicates the magnitude of the problem."*

Rules 27 and 28 fully protect the interest of the State since vehicle is to be returned after depositing the value of the vehicle as well as fine. Payment of fine is in addition to the payment of value of the vehicle. Thus at the time when owner is opting for return of the vehicle, the interest of the State is safeguarded and payment of fine is an additional factor.

17. At this juncture it is relevant to note proviso of Section 23A(2) where it is provided that the sand seized shall not for any reason be released to any person and the same shall be subject to confiscation under Section 23A(4). The above provision thus carve out the above exception that the sand cannot be released. But the said provision does not affect the other articles and vehicles seized. Thus release of the vehicle is not forbidden under the statutory scheme as delineated in Section 23A of the 2001 Act.

18. Now reverting to Rule 27(3) as quoted above, it is clear that provision for return of vehicle within seven days of the seizure was an independent provision engrafted in the Rules. Provision of imposition of fine along with price as fixed by the District Collector is a conscious statutory provision which has enabled the

vehicle owner to get the vehicle returned on paying the value equal to the price fixed by the Collector along with fine. The said provision gives option to the owner and if the owner exercises option under Rule 27(3) he is required to pay fine which is statutory scheme. Provision of Rule 27(3) cannot be said to be in contradiction of any provision of the 2001 Act. Thus provision of Rule 27(3) empowered the RDO/SDM to return the vehicle on payment of fine along the price fixed by the District Collector. The word 'fine' used in Section 20 is a fine consequent to conviction of offence whereas fine under Rule 27(3) is fine for return of the vehicle.

19. It is relevant to note that in Rule 27(3) although the word 'fine' has been used, there is no indication as to what is the limit of imposition of fine, whereas Section 20 of the Act contemplate punishment with fine which may extend to twenty five

thousand rupees. When for conviction of offence under Section 20 fine to the extent of Rs.25,000/- has been statutorily provided, we are of the view that fine as contemplated in Rule 27(3) cannot exceed Rs.25,000/-.

20. In the present case the earlier order dated 9.11.2011 of the RDO/SDM, Thrissur has not been brought on record although subsequent order dated 03.02.2012 has been brought on record as Ext.P1. The order dated 9.11.2011 does not indicate to be an order confiscating the vehicle, hence the order passed by the SDM has to be in reference to Rule 27(3). Since order dated 03.02.2012 clearly stipulates further action under Rule 28(2) and (3). Rule 28(2) refers to fine in Rule 27 (3). In the present case it has to be held that the SDO has exercised power under Rule 27(3) after directing deposit of fine. Thus the fine imposed in exercise of the power under Rule 27(3) was within the power of the RDO. The learned Single Judge did not consider the

2002 Rules and allowed the Writ Petition only observing that there is no provision for imposition of fine under the 2001 Act by the RDO/SDM. We are thus of the view that the judgment of the learned Single Judge cannot be sustained.

The Writ Appeal is allowed setting aside the judgment in W.P(C) No.3840 of 2012. The Writ Petition is dismissed.

ASHOK BHUSHAN,
CHIEF JUSTICE.

A.M. SHAFFIQUE,
JUDGE.

vsv