

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 5207 of 2015 (A)

PETITIONER :

**SHAJI.P., S/O. PUSHANGADAN, AGED 40 YEARS,
VALAVIL HOUSE, PANAVALLY P.O.,
CHERTHALA TALUK, ALAPPUZHA DISTRICT.
(OWNER OF THE LORRY BEARING REGISTRATION NO. KL-11-W-9982).**

BY ADV. SRI.P.M.ZRAJ

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR, MALAPPURAM,
MALAPPURAM DISTRICT, PIN- 686 605.**
- 2. THE REVENUE DIVISIONAL OFFICER (RDO),
PERINTHALMANNA, MALAPPURAM DISTRICT, PIN- 686 605.**

R1 & R2 BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.5207/2015

APPENDIX

PETITIONER'S EXHIBITS: NIL

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.R.RAMACHANDRA MENON, J.

W.P.(C).No.5207 of 2015

Dated this the 4th day of March, 2015

JUDGMENT

The petitioner is the owner of a vehicle bearing registration No.KL-11-W-9982 which was seized by the first respondent on 2.9.2014 alleging illegal transportation of river sand. According to the petitioner no offence has been committed by the petitioner and the request made by the petitioner to release interim custody or to have the adjudication proceedings finalised have not yield any positive result and hence the writ petition.

2. The learned Government Pleader submits on instructions that the vehicle was seized by the first respondent in violation of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 and seizure was actually effected on 10.9.2014 and not on 2.9.2014 as stated by the petitioner. It is stated that the proceedings have been forwarded to the second respondent who is the competent authority to finalise confiscation proceedings. However, this Court

W.P.(C).No.5207 of 2015

finds that by virtue of the amendment to the statute particularly by way of section 23 A, the seizure has to be reported both to the Executive Magistrate as well as the Judicial Magistrate having jurisdiction over the area so as to proceed with the confiscation proceedings and also the prosecution proceedings simultaneously. The effect to the amendment has already been considered by this Court as per the judgment dated 9.2.2015 rendered in W.P.(C) No.3435 of 2015. By virtue of the amendment, the Judicial Magistrate has also been vested with the power to deal with the interim custody till confiscation proceedings are finalised in terms of subsection 4 of section 23A. The authority vested upon the second respondent already under the statute is not tinkered with in any manner and the second respondent remains to be the authority to deal with the confiscation proceedings.

3. In the above circumstances, the petitioner is set at liberty to approach either the 2nd respondent or the Judicial Magistrate having jurisdiction over the area (by virtue of the enabling provision under the proviso to Sub section (2) of Section 23A for getting interim custody, till finalisation of the confiscation

W.P.(C).No.5207 of 2015

proceedings. On filing petitions as above, it will be open for the concerned Magistrate to deal with the same and to pass appropriate orders in the light of the above observations within 'two weeks' in the light of the observations/condition imposed by the Full Bench of this Court in **Shan C.T. Vs. State of Kerala** [2010 (3) KHC 333]. The adjudication proceedings shall be finalised by the 2nd respondent, in accordance with law, as expeditiously as possible, at the earliest, at any rate, within 'six weeks' from the date of receipt of a copy of this judgment. It also goes without saying that it will be for the concerned Judicial Magistrate to proceed with further steps in connection with the prosecution proceedings, in accordance with law.

The writ petition is disposed of.

The petitioner shall produce a copy of this judgment along with a copy of the writ petition, before the concerned respondent for further steps.

Sd/-

**P.R.RAMACHANDRA MENON,
JUDGE.**

rkc.