

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5253 of 2015 (F)

PETITIONER:

**ABDUL RASHEED,
S/O. VEERANKUTTY, AGED 26 YEARS,
IBRANTHODI, EDAYUR P.O.,EDAYUR VILLAGE,
THIRUR TALUK, MALAPPURAM DISTRICT
(OWNER OF THE LORRY BEARING REGISTRATION
NO.KL-21-7207).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
VALANCHERRY POLICE STATION,
MALAPPURAM DISTRICT - 676 101.**
- 2. THE REVENUE DIVISIONAL OFFICER,
THIRUR, MALAPPURAM DISTRICT - 676 101.**
- 3. THE DISTRICT COLLECTOR,
MALAPPURAM DISTRICT - 676 101.**

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 5253 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: TRUE COPY OF THE SEIZURE MAHASSAR DATED 11.2.2014
 PREPARED BY THE FIRST RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R. RAMACHANDRA MENON J.

~~~~~

W.P.(C) No. 5253 of 2015

~~~~~

Dated, this the 19th day of February, 2015

JUDGMENT

The petitioner is the owner of the lorry bearing No. **KL- 21 7207**. According to the petitioner, on 11.10.2014, the first respondent seized the vehicle, alleging illegal transportation of river sand, as borne by Ext. P1 seizure mahazar. The learned counsel for the petitioner submits that though the petitioner approached the concerned Judicial First Class Magistrate's Court and the second respondent for interim custody of the vehicle, both the attempts did not turn to be fruitful. Hence the writ petition, with the following prayers.

- "1. Issue a writ of mandamus or any other appropriate writ, order or direction directing the first respondent to place the entire file in connection with seizure of vehicle of petitioner bearing registration No. KL 21 7207 before the second respondent forthwith.
2. Direct the second respondent to release the vehicle of petitioner for interim custody on whatever conditions this honourable court may deem fit and proper in the

interest of justice and circumstances of the case within a reasonable period which this Honourable court may deem fit and proper.

3. Direct the second respondent to finalize the proceedings in connection with the seizure of vehicle of petitioner within a reasonable period which this Honorable Court may deem fit and proper after giving an opportunity to the petitioner for personal hearing.

4. Declare that the second respondent is also competent authority to release the vehicle for interim custody under the provisions of the Kerala Protection of River Banks and Regulations of Removal Sand Act.

5. Issue such other writ or orders or directions, which this Honourable court may deem fit and proper in the interest of justice and circumstances of the case.

2. Heard the learned Government Pleader as well.

3. A Full Bench of this Court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 =2010(3)KLT 413]** has laid down the manner in which applications for interim custody should be dealt with. Operative portion of the said judgment as contained in paragraph 12 and 13 reads as follows:

"12. Having regard to the facts and circumstances of the case, we are of the opinion that interim custody of the vehicle can be granted on condition that the owner of the vehicle deposits 30% of the value of the vehicle as determined by the appropriate authority under the Motor Vehicles Act in cash and a further condition that the owner of the vehicle should provide either a bank guarantee or immovable property security for the balance of the value of the vehicle. The amount so deposited and the security furnished would follow the final outcome of the confiscation proceedings.

13. We also deem it appropriate to direct that the proceedings under S.23 of the above mentioned Act confiscating the vehicle shall be concluded within six weeks from the date of seizure of the vehicle as far as possible, in which case the need to consider the interim custody of the vehicle may not normally arise. But if for any reason the authorities under the Act are not able to conclude the proceedings within the period of six weeks mentioned above, the interim custody of the vehicle shall be given to the owner on the conditions specified earlier. It is also made clear that to avoid

any controversy and the allegations of undue delay on the part of either party to the proceedings, the competent authority shall put the owner on notice within a period of three days of the date of seizure and the owner or any other person interested in the vehicle shall file his objections to the confiscation within a week thereafter."

4. Considering the facts and circumstances, the first respondent is directed to report the seizure to both the second respondent and the concerned Judicial Magistrate having jurisdiction over the area, in terms of mandate under Section 23A (2) of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001 forthwith. The second respondent is directed to consider the request of the petitioner for interim custody, in accordance with the law declared by the Full Bench of this Court in the decision cited supra, as expeditiously as possible, at any rate within 'one week' from the date of receipt of application for interim custody. The matter shall be finally disposed within 'six weeks' from the date of receipt of a copy of this judgment. It respect of the office involved in contravention of the provisions of the Kerala Protection of River Banks and Regulation of Removal of

W.P.(C) No. 5253 of 2015

: 5 :

Sand Act, prosecution proceedings shall be pursued in accordance with the law declared by the Division Bench of this Court in **Sujith Vs. State of Kerala (2012 (2) KLT 547)**.

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

The writ petition is disposed of.

Sd/-

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

kmd