

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. 5254 of 2015 (F)

PETITIONER :

**SUBAIR, S/O. MUHAMMED, AGED 41 YEARS,
NISHAD MANZIL, NADUVATHUNAGAR.P.O.,
AROORKUTTY VILLAGE, CHERTHALA TALUK,
ALAPUZHA DISTRICT (OWNER OF THE LORRY BEARING
REGISTRATION NO.KL-03-P-2689).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
NILAMBUR POLICE STATION, MALAPPURAM DISTRICT,
PIN - 686 605.**
- 2. THE REVENUE DIVISIONAL OFFICER (RDO),
PERINTHALMANNA, MALAPPURAM DISTRICT, PIN - 686 605.**

R1 & R2 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

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

sts

WP(C).No. 5254 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE NOTICE WITHOUT DATE ISSUED BY THE FIRST
RESPONDENT.**

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON J.

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Dated, this the 19th day of February, 2015

JUDGMENT

The petitioner is stated as the owner of the vehicle bearing No. **KL 03 P 2689**, which has been detained by the first respondent alleging that the vehicle was used for transportation of river sand in violation of the relevant provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001. According to the petitioner, the said vehicle was carrying out 'ordinary sand' at the time of interception. Hence the writ petition, with the following prayers :

"(i) Issue a writ of mandamus or any other appropriate writ, order or direction directing the second respondent to release the vehicle bearing registration No. **KL 03 P 2689** for interim custody on whatever condition this Honourable Court may deem fit and proper in the interest of justice and circumstances of the case.

(ii) Direct the second respondent to finalize the proceedings in connection with the seizure of vehicle of petitioner after analyze the sample of sand in the vehicle

with the experts within a reasonable period which this Honourable Court may deem fit and proper in the interest of justice and circumstances of the case.

3. Issue such other writ 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. The first respondent is directed to report the seizure to both the second respondent and also to the concerned Judicial First Class Magistrate, having jurisdiction over the area forthwith. The second respondent is directed to take sample of sand in presence of

the petitioner and sent it for analysis and report to the competent authority. The request of the petitioner for interim custody, if any, shall be considered by the second respondent, in accordance with law declared by the Full Bench of this Court in the decision cited *supra*, as expeditiously as possible, at any rate within 'two weeks' from the date of receipt of a copy of this judgment. The matter shall be finally disposed within 'six weeks' from the date of receipt of a copy of this judgment, after obtaining the analysis report of sand tested in the competent authority. Prosecution proceedings shall be pursued in accordance with law declared by the Division Bench of this Court in **Sujith Vs. State of Kerala (2012 (2) KLT 547)**.

5. After testing, if it is revealed that the commodity transported by the petitioner is not 'river sand' and if the offence made out is only under the relevant provisions of the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 an opportunity for compounding the offence shall be given to the petitioner, if so desired; subject to satisfaction of a sum of Rs.25,000/- . On such event, once the offence under the MMDR Act/KMMC Rules is

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compounded and no other offence is involved, no further prosecution will lie against the petitioner, in view of the position made clear by this Court in **Digil Vs. S.I. of Police (2013 (1) KLT 600)**

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

The writ petition is disposed of.

sd/-

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

kmd