IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 6482 of 2015 (I)

PETITIONER(S):

SHAJAL MON, AGED 30 YEARS,
S/O.USMAN P., PANCHIL HOUSE, KOLANGARA
PANNIKKODE MUKKOM, KOZHIKODE DISTRICT.

BY ADVS.SRI.T.H.ABDUL AZEEZ
SMT.A.C.ARFANA

RESPONDENT(S):

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1. STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. REVENUE DIVISIONAL OFFICER
KANHANGAD, KASARAGODE DISTRICT - 670 001.

3. STATION HOUSE OFFICER
MANJESHWAR POLICE STATION
KASARAGODE DISTRICT 670001.

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

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

PJ

WP(C).No. 6482 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - **TRUE COPY OF THE G.O(MS) NO.161/09/ID DATED 14-12-2009**

EXT.P2 - **TRUE COPY OF THE CIRCULAR NO.58289/P3/2010/REVENUE DATEED 11-11-2010 ISSUED BY THE REVENUE DEPARTMENT OF 1ST RESPONDENT**

EXT.P3 - **TRUE COPY OF THE INVOICE NO.556 DATED 22-1-2015 ISSUED BY THE DEALER APARNA ENTERPRISES TO THE PETITIONER'S VEHICLE NO. KA 09B 4243**

EXT.P4 - **TRUE COPY OF THE TAX RECEIPT ISSUED BY THE KERALA COMMERCIAL TAX DEPARTMENT, TAX CHECK POST, MANJESWARAM TO THE PETITIONER'S VEHICLE NO. KA 09B 4243**

EXT.P5 - **TRUE COPY OF THE FIR NO.48/2015 OF MANJESHWAR POLICE STATION**

EXT.P6 - **TRUE COPY OF THE ENTRY PASS ISSUED BY THE MANJESWAR CHECKPOST AND THE EXIST PASS ISSUED BY IT TO PETITIONER'S VEHICLE NO. KA 09B 4243**

EXT.P7 - **TRUE COPY OF THE ORDER DATED 8-1-2015 IN WPC. NO.583/2015(W)**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.6482 of 2015

Dated this the 3rd day of March, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing No.KA-09-B-4243, in which 'river sand' was stated as transported from the State of Maharashtra based on Ext.P3 invoice issued by the dealer by name 'M/s. Aparna Enterprises'. Such material was transported on the strength of Ext.P4 as well, which is a tax receipt as to remittance of tax to the requisite extent before the Tax Check Post at Manjeswar, with specific reference to the vehicle belonging to the petitioner. It was in the course of further transit, that intervention was made before the Police, who seized the vehicle leading to Ext.P5 FIR of the Manjeswar Police Station. The learned counsel for the petitioner submits that, the proceedings are per se wrong and illegal in all respects, which is sought to be substantiated with reference to Ext.P6 entry/exit pass issued by the Tax Check Post Authorities in respect of the vehicle bearing No.KA-09-B-4243. Because of the continued detention, the petitioner is constrained to approach this Court by filing the writ petition, for immediate intervention.

2. The learned Government Pleader submits on instructions that, the version of the petitioner is not at all correct, as the vehicle has not passed through the <u>RTO Check Post</u>, which is <u>located in the boundary</u> of the two States, ie. State of Kerala and the State of Karnataka. A Certificate has also issued in this regard by the authorities of the Motor Vehicle Department, Thalappadi Check Post. The learned Government Pleader further submits that, the <u>Commercial Tax Check Post is situated at a further distance of 6 Kms.</u> into the State and production of the document issued from the said Check Post cannot lead to an inference as to the transportation of the material from the State of Karnataka, in so far as there is no entry in the RTO Check Post. The matter has been investigated and charge sheet has been filed before the concerned Magistrate's Court under Section 173 of the Code of Criminal Procedure. It is also stated that, steps are being taken, to cause the matter to be reported to the second respondent, who is the confiscating authority in terms of

the Sand Act.

3. By virtue of the amendment of the statute, particularly Section 23A and the proviso to Sub Section (2) thereunder, power is vested with the Magistrate having jurisdiction over the area, to deal with the interim custody of the vehicle. Sub Section (1) of Section 23A says that, the authority effected the seizure has been reported the same to both the Magistrates, ie. Executive Magistrate as well as the Judicial Magistrate. The confiscation proceeding has to be pursued and finalised by the Executive Magistrate/competent authority, who is none other than the second respondent, whereas the prosecution proceedings have to be finalised by the Judicial Magistrate. The circumstances under which interim custody could be granted has been explained by a Full Bench of this Court as per the decision reported in ***Shan C.T. v. State of Kerala [2010 (3) KHC 333]***, operative portion of which as contained in paragraphs 12 and 13 are in the following terms:

> *"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 position has not undergone any substantial change even after the amendment of Section 23A, which is only to the effect that, the power to grant interim custody has been vested upon the Judicial Magistrate as well.

5. In the said circumstances, the petitioner is set at liberty to approach either the second respondent or the Judicial Magistrate having jurisdiction over the area, claiming interim custody. If any such application is filed, the same shall be

considered and appropriate orders shall be passed in terms of the verdict passed by the Full Bench of this Court as aforesaid within 'two weeks' from the date of receipt of a copy of this judgment. The adjudication proceedings shall be finalised by the second respondent with notice to the petitioner, as expeditiously as possible, at any rate, within 'six weeks' thereafter. Prosecution proceedings shall be continued and finalised in accordance with law, as expeditiously as possible. The seizure, if not reported to the second respondent shall be reported forthwith.

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

The writ petition is disposed of.

P.R. RAMACHANDRA MENON,
JUDGE

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