

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 7223 of 2015 (C)

PETITIONER :

**MUHAMMED SABIR,
PROPRIETOR, M/S.CHALLAND TRADERS,
KOOVODE ROAD, THALIPARAMBA,
KANNUR DISTRICT.**

BY ADV. SRI.O.D.SIVADAS

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KANNUR-670001.**
- 2. THE SUB INSPECTOR OF POLICE,
PAYYANNUR-670307.**

R1 & R2 BY GOVT. PLEADER SRI. JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 7223 of 2015 (C)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1: THE COPY OF THE REGISTRATION CERTIFICATE ISSUED IN FAVOUR
 OF THE PETITIONER.**
- EXT.P2: THE COPY OF THE BILL DATED 2/03/2015 ISSUED BY THE DEALER
 FOR THE LOAD.**
- EXT.P3: THE TRANSIT PASS ISSUED BY THE MINING AND GEOLOGY
 DEPARTMENT, KARNATAKA.**
- EXT.P4: THE COPY OF THE DELIVERY NOTE IN RELATION TO THE
 CONSIGNMENT.**
- EXT.P5: THE COPY OF THE BILL DATED 2/3/2015 ISSUED BY THE PETITIONER
 FOR 2ND SALE.**
- EXT.P6: THE COPY OF THE PROCEEDING DATED 17/07/2013 ISSUED BY THE
 GOVERNMENT OF KARNATAKA, MINING AND GEOLOGY DEPARTMENT.**
- EXT.P7: THE COPY OF THE PROCEEDING DATED 17/12/2013 ISSUED BY THE
 GOVERNMENT OF KARNATAKA, MINING AND GEOLOGY DEPARTMENT.**
- EXT.P8: THE COPY OF THE PROCEEDING OF 1ST RESPONDENT DATED
 4/06/2013.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

P.R.RAMACHANDRA MENON, J.

W.P.(C) No. 7223 of 2015

Dated this the 11th day of March, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing no.KL 8/AV 381, in which silica sand was transported from the State of Karnataka to be brought to the destination in Kerala. The said activity is being pursued by the petitioner in the course of business based on Ext.P1 certificate of registration.

2. The silica sand was purchased by the petitioner as per Ext.P2 invoice dated 2.3.2015, and so as to transport the same, Ext.P3 transit pass was issued from the competent authority in Karnataka. Ext.P4 is a copy of delivery note in relation to the consignment. In the course of transit, the petitioner sold the commodity to somebody else, as per Ext.P5 bill which is a sale in the course of transit. While the vehicle was proceeding as above, the 2nd respondent intervened and seized the vehicle on 2.3.2015, alleging illegal transport of river sand and commission of the offence under Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

3. The case of the petitioner is that provisions of the said Act are not at all attracted and the course pursued by the 2nd respondent is *per se* wrong and illegal in all respects.

4. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

5. In the course of hearing, the learned counsel for the petitioner points out that silica sand is not at all river sand and that there is no ban in transporting the said material from the State of Karnataka to anywhere outside the State. The factual position in this regard stands certified by the authority of Karnataka State, as evidenced by Exts.P6 and P7, in respect of some earlier instances when doubt was raised from the part of the Police. The fact that the 1st respondent also had an occasion to consider the matter under similar circumstance and the vehicle seized by the Police transporting silica sand was ordered to be released by the 1st respondent as evidenced by Ext.P8. Petitioner seeks for similar relief.

6. After hearing both the sides and after going through the materials on record, this Court finds that there is considerable force in the submission made by the learned counsel for the petitioner. The commodity transported by the petitioner appears to be silica sand brought from Karnataka, and if this be so, the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act are not attracted.

7. It is stated that the 2nd respondent has already registered a crime as Crime No.311/2015 of Payyannur Police Station, under the impression that offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act was involved. The 2nd respondent is directed to forward the proceedings to the 1st respondent forthwith, if not done already, and the 1st respondent shall consider the matter and pass appropriate orders in the light of the relevant records including Ext.P8 proceedings, after affording an opportunity of hearing to the petitioner. This shall be done within 'one week' from the date of production of a copy of the judgment. It is open for the 1st

respondent to hear the matter on the date of production of the judgment, if convenient, or else, the date of hearing shall be let known to the petitioner then and there and it will be for the petitioner to appear on that date.

Writ petition is disposed of. The petitioner shall produce a copy of the judgment along with a copy of the Writ Petition before the concerned respondent for further steps.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

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