

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

WP(C).No.7298 of 2015 (J)

PETITIONER:

**PRAMOD KUMAR,AGED 38 YEARS,
S/O.APPUNNI,THATHAMMEL HOUSE,
PONNANI P.O.,MALAPPURAM DISTRICT.**

BY ADV. SRI.S.SHAJAHAN (ADOOR)

RESPONDENTS:

- 1. STATION HOUSE OFFICER,
PONNANI POLICE STATION,
MALAPPURAM DISTRICT-676 505.**
- 2. SUB DIVISIONAL MAGISTRATE,
THIRUR,MALAPPURAM-676 505.**
- 3. DISTRICT COLLECTOR,CIVIL STATION,
MALAPPURAM-676 505.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).No.7298 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:

**EXT.P1:A COPY OF THE SEIZURE MAHAZAR PREPARED BY THE FIRST
RESPONDENT DATED 5.2.2015.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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P.R.RAMACHANDRA MENON, J.

W.P.(C) No. 7298 of 2015

Dated this the 10th day of March, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing registration no. KL-01-BD-9058, which was seized by the 1st respondent as per Ext.P1 mahazar dated 5.2.2015 alleging illegal transportation of river sand.

2. The case of the petitioner is that no such offence has been committed by the petitioner and that the goods are supported by valid documents.

3. The version of the petitioner is sought to be rebutted by the learned Government Pleader pointing out that no document is produced before this Court, so as to sustain the transaction.

4. In any view of the matter, this Court does not find it necessary to deal with the merit, since further proceedings have

to be taken both by way of confiscation proceedings, if the same is sustainable, and so also by way of prosecution proceedings, by virtue of the mandate under the newly amended provision ie, Section 23A of the 'MMDR Act' and also in the manner as explained by this Court as per the decision reported in **2015 (1) KLT 949**.

5. Learned Government Pleader also points out that a Crime has already been registered as Crime No.186/2015 of Ponnani Police Station and that steps are being proceeded with, in connection with prosecution. By virtue of the mandate under the amended provision i.e., section 23A of the 'MMDR Act' and also as explained by this Court as in the decision cited supra, the petitioner is at liberty to move either the 2nd respondent or the concerned Magistrate having jurisdiction over the area for getting the interim custody of the vehicle.

6. If any such petition is filed, it shall be considered and interim custody shall be released subject to satisfaction of the

terms as made clear by the Full Bench of this Court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 =2010(3)KLT 413]**, which has laid down the manner in which applications for interim custody should be dealt with. Operative portion of the said judgment as contained in paragraphs 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.”.

7. The confiscation proceedings shall be finalised by the 2nd respondent within six weeks thereafter. If the seizure is not reported to the 2nd respondent it shall be done by the 1st

respondent forthwith. The prosecution proceedings shall be pursued and finalized in accordance with law taking the proceedings to a logical conclusion .

Disposed of accordingly.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

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