

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 10476 of 2015 (H)

PETITIONER(S):

**VINOD, S/O.BALAKRISHNAN, 5/61,
PALLELAVALAPPIL HOUSE, PURATHUR P.O.,
TIRUR, MALAPPURAM DISTRICT,
(OWNER OF GOODS CARRIAGE
BEARING REG. NO.KL-08D/5031).**

BY ADV. SRI.K.K.MOHAMED RAVUF.

RESPONDENTS:-

- 1. THE REVENUE DIVISIONAL OFFICER,
TIRUR - 676 101, MALAPPURAM DISTRICT.**
- 2. THE SUB INSPECTOR OF POLICE,
TIRUR - 676 101, MALAPPURAM DISTRICT.**

BY GOVT. PLEADER SRI.K.C. VINCENT.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

WP(C).No. 10476 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1. TRUE COPY OF THE AGREEMENT DATED 25.12.2014.

EXHIBIT P2. TRUE COPY OF THE SEIZURE MAHASAR.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.10476 of 2015

Dated this the 31st day of March, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing Registration No.KL-08/D-5031, which was seized by the 2nd respondent as per Ext.P2 Mahazar dated 09.10.2014, alleging illegal transportation of 'river sand' and violation of the provisions of Kerala Protection of River Banks and Regulation of Removal of Sand Act. According to the petitioner, no offence has been committed and the proceeding pursued by the 2nd respondent is per se wrong and illegal in all respects.

2. The learned Government Pleader appearing for the respondents submits that the petitioner is possessing the vehicle on the strength of Ext.P1 agreement of sale dated 25.12.2014 and it was while so, that the petitioner made use of the vehicle for illegal transportation of 'river sand'. Referring to the contents

of Ext.P2 Mahazar, it is stated that the driver of the vehicle, immediately on seeing the police, alighted and ran away, leaving the vehicle at the spot. The information gathered by the police is to the effect that it was a stolen article and as such, offence under Section 379 IPC is also involved. By virtue of the recent amendment of the statutory provision, particularly by virtue of the Section 23A(2) of the Mines and Mineral (Development and Regulation) Act, 1957, the Judicial Magistrate having the jurisdiction over the area is also mentioned as a competent authority to deal with the claim, if any, for interim custody of the vehicle. The Revenue Divisional Magistrate/Sub Divisional Magistrate is to proceed with further steps for confiscation of the vehicle. By virtue of the amendment, the power of the 1st respondent to pursue the confiscation proceedings is not taken away and the offence, if at all any, will involve both the confiscation proceedings as well as prosecution proceedings. It is also relevant to note that, by virtue of the amendment, it is open for the petitioner to approach either the first respondent or the Judicial Magistrate having jurisdiction over the area for getting interim custody of the vehicle and such application, if any, has to

be considered and decided in the light of the observation made by the Full Bench of this Court in ***Shan C.T. v. State of Kerala [2010 (3) KHC 333]***. The legal position has been made clear by this Court recently as well, as per the decision reported in ***Faisal v. Assistant Sub Collector [2015 (1) KLT 949]***.

3. In the above circumstances, the 2nd respondent is required to report the seizure to the concerned Magistrate having jurisdiction over the area, if not effected so far and the petitioner is set at liberty to move the 1st respondent for interim custody of the vehicle, if offence under the 'Rive Sand Act' alone is involved or else, the petitioner is free to move the concerned Magistrate's Court, if any other offence is also involved, along with the offence under the 'River Sand Act'. On filing such petition, the claim for interim custody shall be considered and dealt with in the light of the observation made by the Full Bench of this Court in ***2010 (3) KHC 333*** (cited supra), imposing appropriate conditions as mentioned therein. This will not bar the way of the 1st respondent in proceeding with further steps in connection with the confiscation proceedings as contemplated under the relevant provisions of law.

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

The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE

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