

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 10673 of 2015 (H)

PETITIONER(S) :

**RAMESH K., AGED 25 YEARS,
S/O.KAIKAALAN, KANNOTH HOUSE,
IRIYA P.O, KASARAGOD DISTRICT- 671 531.**

BY ADV. SRI.B.V.JOY SANKER

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
CIVIL STATION, VIDYA NAGAR, KASARAGOD- 671 121.**
- 2. THE SUPERINTENDENT OF POLICE,
KASARGOD- 671 123.**
- 3. THE REVENUE DIVISIONAL OFFICER,
KANHANGAD, KASARAGOD- 671 121.**
- 4. THE GEOLOGIST, CIVIL STATION,
VIDYA NAGAR, KASARAGOD- 671 121.**
- 5. THE SUB INSPECTOR OF POLICE, HOSDURG,
KASARAGOD DISTRICT- 671 315.**

BY SR.GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE F.I.R PREPARED BY THE 5TH RESPONDENT
IN CRIME NO.354/15 DATED 26.03.2015.**

**EXHIBIT P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT
DATED 26.03.2015.**

**EXHIBIT P3: TRUE COPY OF THE REPRESENTATION SUBMITTED BY
THE PETITIONER BEFORE THE 4TH RESPONDENT
DATED 26.03.2015.**

**EXHIBIT P4: TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT DATED 26.03.2015.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 10673 of 2015

Dated this the 1st day of April, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing No.KL-60-C-1742 which was seized by the 5th respondent, leading to Ext.P1 F.I.R. with reference to Crime No.354/2015, in respect of the offences under the Kerala Protection of River Banks and Regulation of Removal of Sand Act and under Section 379 of the IPC. The case of the petitioner is that, the request made by the petitioner to release the vehicle is not acceded to and hence the writ petition.

2. Heard the learned Government Pleader as well.

3. The position as on date is that, by virtue of the amendment of Section 23A of the 'Sand Act', power has been conferred also upon the Judicial Magistrate having jurisdiction over the area, to deal with the application, if any, for granting interim custody. The power to pursue the confiscation proceedings still stands upon the 3rd respondent. The proper course to be followed has been explained by this Court as per the recent ruling reported in **Faisal V. Assistant Sub Collector (2015 (1) KLT 949)**.

4. The learned counsel for the petitioner submits that, the commodity that was actually being transported by the petitioner was not river sand but ordinary sand. Hence there will be a direction to take out samples in the presence of the petitioner and to cause the same to be tested by the competent authority.

The petitioner is set at liberty to approach either in the 2nd respondent or the concerned Judicial Magistrate having jurisdiction over the area for interim custody of the vehicle. If any such application is filed, the same shall be considered and appropriate orders shall be passed incorporating appropriate conditions 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 =2010(3)KLT 413]**. The confiscation proceedings shall be finalised by the 3rd respondent in accordance with law, within 'six months' thereafter. The prosecution proceedings both under the Sand Act and the offence under the IPC shall be pursued and finalised by the concerned Judicial Magistrate. The writ petition stands disposed of.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.