

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 14715 of 2015 (L)

PETITIONER(S):

**AJITH KUMAR, AGED 35 YEARS,
S/O BALAN, NAGALATH, MALAYATTOOR P.O.
MALAYATTOOR VILLAGE, ALUVA TALUK,
ERNAKULAM DISTRICT.
(OWNER OF THE LORRY BEARING REGISTRATION NO.KL-17-B-7341).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
KALADY POLICE STATION,
ERNAKULAM DISTRICT, PIN:683537.**
- 2. THE REVENUE DIVISIONAL OFFICER
(RDO), FORTKOCHI, ERNAKULAM DISTRICT,
PIN:682001.**

BY GOVERNMENT PLEADER SRI.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 14715 of 2015 (L)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE FIRST INFORMATION REPORT AS NO.595 DATED 6.6.2012 OF KALADY POLICE STATION.

EXHIBIT P2: TRUE COPY OF THE SEIZURE MAHASSAR DATED 6.6.2012 PREPARED BY THE FIRST RESPONDENT.

EXHIBIT P3: TRUE COPY OF THE CASH MEMORANDUM ISSUED BY THE MALAYATTOOR-NEELEESWARAM GRAMA PANCHAYATH DATED 6.6.2012.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P.C. No.14715 of 2015

Dated this the 22nd day of May, 2015.

JUDGMENT

The petitioner is aggrieved with the seizure of the vehicle effected as per Ext.P2 Mahazar. The allegation on which the seizure was effected is that the vehicle was carrying river sand in violation of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. A crime was registered as per the provisions of the Act as indicated in Ext.P1 FIR. The vehicle also is said to have been produced before the Jurisdictional Judicial Magistrate. However, the provisions of the Sand Act of 2001 mandate criminal proceedings against the offender as also confiscation proceedings against the vehicle, the latter of which has to be carried out by the Jurisdictional Sub-Divisional Magistrate. The confiscation proceedings are to be carried out as per Section 23A of the Act of 2001, by the Sub-

Divisional Magistrate having jurisdiction over the area. It is also indicated in Section 23A(1) that the documents to enable the commencement of confiscation proceedings, have to be forwarded to the Jurisdictional Sub Divisional Magistrate within 48 hours from the seizure. The petitioner is aggrieved in so far as the Jurisdictional Sub-Divisional Magistrate having not commenced the confiscation proceedings as aforesaid, which prejudices the petitioner in so far as interdicting interim custody of the vehicle. The petitioner's contention is that the petitioner has a valid pass at Ext.P3, which contention has to be considered by the appropriate authority.

2. The various proceedings under the Sand Act, being the criminal proceeding as also the confiscation proceedings; has been delineated in ***Faisal V. Assistant Sub Collector*** [2015 (1) KLT 949].

3. The learned Single Judge has affirmed the two separate proceedings under the Criminal Procedure Code as also for confiscation under the Sand Act of 2001, the jurisdiction for which is respectively conferred on the Jurisdictional Judicial

Magistrate and the Jurisdictional Sub Divisional Magistrate. On the question of interim custody, it has been declared that both the Sub Divisional Magistrate as also the Judicial Magistrate have such powers, which are to be exercised on the principles laid down by a Full Bench of this Court in **Shan C.T. v. State of Kerala** [2010 (3) KLT 413]. The present petitioner is not concerned with the interim custody of the vehicle and only prays that the confiscation proceedings be concluded within a specific period.

4. Considering the provisions of the Sand Act, 2001 it was incumbent upon the 1st respondent herein, to have forwarded the entire documents relating to the seizure of the vehicle, to the Jurisdictional Sub-Divisional Magistrate, the 2nd respondent, within 48 hours of the seizure. If the same has not been transmitted till date, the same shall be done within two days of the date of production of the certified copy of this judgment. The petitioner shall then appear before the RDO, the 2nd respondent herein, who shall commence the confiscation proceedings and shall issue a specific date of hearing to the petitioner personally.

The entire exercise with respect to the confiscation shall be concluded within a period of six weeks from the date of appearance of the petitioner before the 2nd respondent.

The writ petition is disposed of.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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