

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

WP(C).No. 17828 of 2015 (C)

PETITIONER(S):

**ASHRAF, S/O.ABBAS AGED 31 YEARS,
KUNNUPARA HOUSE, CHATTENCHAL, THEKKIL P.O.
KASARAGOD DISTRICT.**

**BY ADVS.SMT.HEMALATHA
SRI.BINU GEORGE**

RESPONDENT(S):

**1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.**

**2. S.H.O., KASARAGOD POLICE STATION,
KASARAGOD DISTRICT - 671 316.**

*** ADDL.R3 IMPEADED**

**3. SUB DIVISIONAL MAGISTRATE,
KASARAGOD AT KAHNANGAD, KAHNANGAD,
KASARAGOD DISTRICT,
PIN - 671 516.**

ADDL.R3 IS IMPEADED AS PER ORDER DATED 22.06.2015 IN IA 8110/15.

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

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APPENDIX

PETITIONER(S)' EXHIBITS

P1 - A TRUE COPY OF FIR IN CRIME NO.83/2015 OF KASARAGOD POLICE STATION.

P1(A) - A TRUE COPY OF THE SEIZURE MAHAZAR.

P2 - A TRUE COPY OF THE ANALYTICAL REPORT DATED 26.3.2015

P3 - A TRUE COPY OF JUDGMENT IN WPC. NO.3435/2015 DATED 9.2.2015

P4 - A TRUE COPY OF FINAL REPORT IN CRIME NO.83/2015 DATED 31.1.2015

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

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Dated this the 22nd day of June, 2015

J U D G M E N T

The petitioner's vehicle bearing Registration Number KL-14-J-137, was seized on 29.01.2015, alleging commission of an offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for brevity, 'Sand Act') Crime No. 83 of 2015 of Kasaragod Police Station was registered and the same is said to be seized of by the Jurisdictional Magistrate. As per the Sand Act, the proceedings for prosecution and confiscation are parallel proceedings, the former to be proceeded with by the Jurisdictional Magistrate and latter by the jurisdictional R.D.O. The specific case of the petitioner is that, the petitioner had not been transporting river sand and that is evident by Ext.P2, which is a chemical analysis report by the Directorate of Mining and Geology, of the sample taken from the

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vehicle of the petitioner's, seized by the respondents.

2. The analysis indicates that the sand is a beach sand and not river sand, hence the provision of Sand Act may not be applicable. However, the confiscation proceedings being the power conferred on the R.D.O, it is only proper that the R.D.O consider the same in a time bound manner. The 2nd respondent if not already transmitted, shall immediately transmit the documents to the R.D.O for consideration at any rate within a period of one week from the date of receipt of the certified copy of this judgment.

3. The petitioner shall approach before the R.D.O, the additional 3rd respondent on 02.07.2015 at 11 a.m, on which date, the petitioner's application shall be considered or at least interim custody be considered. In considering the interim custody, it is made clear that the report, Ext.P2 if found to be genuine there is no reason why the provisions of the Sand Act as

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has been dilated upon by this court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 = 2010(3) KLT 413]** should be looked into. The proceedings shall be completed at any rate within one month from the date of appearance of the petitioner. The interim application shall be considered expeditiously within a week from the date of appearance of the petitioner.

The writ petition is disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P.A to Judge.