

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 21273 of 2015 (H)

PETITIONER :

**KOSHY @ THAMBI
AGED 48 YEARS, S/O BABY, BENSIL COTTAGE
PEEDIKAYIL, NADUVATTOM, PALLIPPAD.**

**BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL**

RESPONDENT(S) :

- 1. DISTRICT POLICE CHIEF
S.P. OFFICE, ALAPPUZHA.**
- 2. CIRCLE INSPECTOR OF POLICE
HARIPPAD POLICE STATION, HARIPPAD.**
- 3. SUB INSEPCTOR OF POLICE
HARIPPAD POLICE STATION, HARIPPAD.**
- 4. DEPUTY SUPERINTENDENT OF POLICE
CBCID, ALAPPUZHA.**

**R1 TO R4 BY ADDL. DIRECTOR GENERAL OF PROSECUTION
SRI.TOM JOSE (PADINJAREKARA)**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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...2/-

WP(C).No. 21273 of 2015 (H)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1: COPY OF THE FIR NO. 500/15 OF THE HARIPPAD POLICE STATION.

EXT.P2: COPY OF THE FINAL REPORT.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

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ALEXANDER THOMAS, J.

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W.P.(C).No. 21273 of 2015

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Dated this the 4th day of August, 2015

J U D G M E N T

The prayers in this Writ Petition filed under Art.226 of the Constitution of India are as follows:

- “i. To issue a writ of mandamus or any other appropriate writ, order or direction directing the first respondent to handover the investigation to the 4th respondent.
- ii. To issue a writ of mandamus or any other appropriate writ, order or direction directing the first respondent to send the sample of the same to the chemical laboratory for examination.”

2. Heard Sri.R.Sunilkumar, learned counsel for the petitioner and Sri.Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution appearing for the respondent State of Kerala.

3. Earlier the learned Addl. D.G of Prosecution was requested by this Court to get instructions in the matter on the prayer of the petitioner to get the seized sand tested in order to ascertain as to whether it is river sand or ordinary earth. This was so done because the specific case of the petitioner was that the material seized from the vehicle in question in the instant crime is

not river sand or but ordinary earth and that therefore the offence under the provisions of the Mines and Minerals (Development & Regulation) Act (MMDR Act) will not lie.

4. Today when the matter was taken up for consideration, the learned Addl. D.G. of Prosecution and Addl. State Public Prosecutor submits that the prosecution has no objection in this Court granting the prayer No.ii of the Writ Petition, with the condition that the direction should be to the 3rd respondent (not to the 1st respondent) to send the sample of the seized material to the chemical laboratory for examination. Accordingly, it is ordered in the interest of justice that the 3rd respondent investigating officer in the crime shall forward appropriate sample of the seized material involved in this crime for scientific test in the approved laboratory concerned, but through the competent criminal court concerned. It is pointed out by the learned Addl. D.G. of Prosecution that as per the prescribed procedure, the sample of the seized material has to be forwarded through the jurisdictional Magistrate court dealing with the crime to the Director of Mining and Geology, who in turn, will forward it to one of the approved laboratories for testing and to ascertain as to whether it is river sand or not. As the impugned

crime was registered on 9.4.2015, the respondent concerned will ensure that the process of testing is completed without any further delay, preferably within a period of two months. After the test results are over, the same shall be forwarded to the jurisdictional Magistrate's court concerned and copy of the same shall also be forwarded by the authority concerned to the investigating officer concerned to enable him to complete the investigation without any further delay and for submission of the necessary final report in the matter.

With these observations and directions, the Writ Petition (Civil) stands finally disposed of.

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge