

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

W.P.(C).No. 32621 of 2015 (B)

PETITIONER :

JUBY JOHN,
AGED 36 YEARS,
S/O.BABY JOHN,
RESIDING AT KUMMINIYIL HOUSE,
9/41,
UDUMBANNOOR,
MOOLAKKAD P.O.,
UPPUKUNNU,
THODUPUZHA.

BY ADVS.SRI.P.G.JAYASHANKAR
SMT.P.SREELAKSHMI
SRI.V.SREEJAYAN

RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
TRIVANDRUM - 695 001.
2. DIVISIONAL FOREST OFFICER,
DIVISIONAL FOREST OFFICE,
KOTHAMANGALAM FOREST DIVISION,
KOTHAMANGALAM P.O - 686 691.
3. FOREST RANGE OFFICER,
THODUPUZHA RANGE,
THODUPUZHA - 685 587.

BY SRI.M.P.MADHAVANKUTTY, SPECIAL GOVT. PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 13-11-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

bpr

W.P(C) .No. 32621 of 2015 (B)

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1 TRUE COPY OF THE FOREST OFFENCE SEIZURE REPORT IN
OR NO.3/2015, UNDER S.52(1) OF THE KERALA FOREST
ACT, 1961.
- EXT.P2 TRUE COPY OF THE NOTICE BEARING NO.A2.148/14 DATED
01.06.2015.
- EXT.P3 TRUE COPY OF THE REPLY DATED 17.06.2015.
- EXT.P4 TRUE COPY OF THE JUDGEMENT DATED 13.08.2015 IN
WA NO.1809/2015 OF THE HON'BLE HIGH COURT OF
KERALA.
- EXT.P5 TRUE COPY OF THE APPLICATION DATED 16.09.2015.
- EXT.P6 TRUE COPY OF THE LETTER BEARING NO.A2.148/15 DATED
19.09.2015.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

bpr

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 32621 of 2015

Dated this the 13th day of November, 2015

JUDGMENT

The petitioner's two vehicles has been seized alleging involvement of forest offence. The seizure was on 03.01.2015. Pursuant to the directions of this Court, the vehicles had been ordered to be released to the petitioner, total payment of Rs.6,20,000/- on interim custody.

2. The learned counsel for the petitioner submits that this order is in violation of the Section 53 of the Kerala Forest Act, 1961. Section 53 of the Kerala Forest Act reads as follows :

“53. Power to release property seized under Section 52 : Any Forest Officer of a rank not inferior to that of a Ranger, who or whose subordinate has seized any tools, boats, vehicles or cattle under the provisions of Section 52, may release the same on the execution by

the owner thereof a bond for the production of the property so released, if and when so required before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.”

3. It is to be noted that Section 53 contemplates of discretionary relief to grant interim custody, pending proceedings for confiscation only. This would apply if the vehicles are required to be produced before a Magistrate who is trying an offence. In this case, proceedings are initiated under Section 61 for confiscation.

4. The learned Special Government Pleader would submit that in the light of the judgment of the Hon'ble Supreme Court in State of Karnataka V. K. Krishnan[(2000)7 SCC 80], the vehicles can be released only based on Bank guarantee or value of demand.

5. The learned counsel for the petitioner submits that judgment of the Supreme Court has no relevance and it was in the context of the Karnataka Forest Act. Assuming that judgment has no relevance, this Court is of the view that

discretionary relief need not be exercised unless the petitioner makes out case that involvement of those vehicles is too remote.

6. Therefore, there is no necessity to order release of the vehicles on interim custody. Considering the fact that the vehicles have been seized in the month of January, 2015, consequential proceedings shall be completed within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

bpr