

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 34752 of 2014 (T)

PETITIONER :

**SAKEER HUSSAIN,
S/O.KUNHIMUHAMMED, MUNDUMMAL HOUSE,
MOORKKANAD, PERINTHALMANNA,
MALAPPURAM DISTRICT.**

BY ADV. SRI.T.PRASAD

RESPONDENT(S):

- 1. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA,
MALAPPURAM, PIN -676 505**
- 2. THE SUB INSPECTOR OF POLICE,
KOLATHUR POLICE STATION,KOLATHUR P.O,
MALAPPURAM, PIN -679 338**

***ADDL.R3 IMPEADED**

***ADDL.R3: THE SUPERINTENDENT OF POLICE,
MALAPPURAM.**

***ADDL.R3 IS SUO MOTU IMPEADED AS PER ORDER DATED 14/1/2015**

BY GOVERNMENT PLEADER SRI.M.MUHAMMED SHAFI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.34752/2014

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE R.C.PARTICULARS OF THE PETITIONER'S VEHICLE BEARING REG.NO.KL-10-AF-8135.**
- P2 COPY OF THE SEIZURE MAHAZER OF THE 2ND RESPONDENT**
- P3 PHOTOGRAPHS OF THE PETITIONER'S VEHICLE BEARING REGISTRATION NO.KL-10-AF-8135.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 34752 of 2014

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Dated, this the 25th day of February, 2015

JUDGMENT

The petitioner is stated as the owner of the vehicle bearing No.**KL 10 AF 8135**, which was detained by the second respondent on 15.09.2014 alleging that the vehicle was used for transportation of river sand in violation of the relevant provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act 2001. According to the petitioner, there was no sand in the vehicle, when it was seized. Hence the writ petition.

2. When the matter came up for consideration on 14.01.2015, the following interim order was passed :

"The learned counsel for the petitioner contends that the vehicle belonging to the petitioner was seized by the second respondent on 15.09.2014 when it was empty, alleging that there was illegal transportation of river sand. Photographs have been produced as Ext. P3.

2. The learned Government Pleader submits, on instructions and also with reference to Ext. P2 mahazar, that when the seizure of the vehicle effected, it was full of river sand. But since the vehicle was left on the side

of the road near the police station and since its side body/cover lying opened, the river sand got washed away in rain. One of the photographs in Ext. P3 reveals that part of the river sand is lying on one side and just beneath the lorry. This Court fails to understand how the side cover of the lorry got opened or was there any clandestine exercise by anybody to cause the river sand to be removed or was there any attempt of theft. If any contribution was there from the part of the police is also a matter to be enquired into and if any delinquency is there on the part of the police officers, appropriate proceedings have to be taken against the delinquents. However, this Court refraining from expressing anything in this regard, before ascertaining the facts.

In the said circumstances the writ petition stands admitted. The Superintendent of Police, Malappuram is suomotu impleaded as the additional 3rd respondent. The learned Government Pleader takes notice for the respondents, including the additional respondent impleaded.

The additional 3rd respondent is directed to conduct a detailed enquiry and file a report before this Court as to the course and events, whereby the petitioner has now been enabled to put up a plea that

the vehicle was empty, when it was seized.

Post after two weeks.

3. Pursuant to the order as above, the learned Government Pleader filed a memo dated 13.02.2015 along with report of the District Police Chief dated 09.02.2015. It is stated that a crime has already been registered against the petitioner. It is pointed out that, on filing the charge sheet before the Judicial First Class Magistrate's Court, Perinthalmanna, it is taken on file as C.C. No. 705 of 2014 and that the same is pending consideration.

4. In view of the amendment of the Statute, particularly under Section 23A of the Act, the second respondent is directed to report the seizure to both the first respondent and also to the concerned Judicial First Class Magistrate, having jurisdiction over the area. It is for the petitioner to approach either the first respondent or the concerned Judicial First Class Magistrate, having jurisdiction over the area, to have the interim custody of the vehicle, if so desired.

4. A Full Bench of this Court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 =2010(3)KLT 413]** has laid down the manner in which applications for interim custody should be

dealt with. Operative portion of the said judgment as contained in paragraph 12 and 13 reads as follows:

"12. Having regard to the facts and circumstances of the case, we are of the opinion that interim custody of the vehicle can be granted on condition that the owner of the vehicle deposits 30% of the value of the vehicle as determined by the appropriate authority under the Motor Vehicles Act in cash and a further condition that the owner of the vehicle should provide either a bank guarantee or immovable property security for the balance of the value of the vehicle. The amount so deposited and the security furnished would follow the final outcome of the confiscation proceedings.

13. We also deem it appropriate to direct that the proceedings under S.23 of the above mentioned Act confiscating the vehicle shall be concluded within six weeks from the date of seizure of the vehicle as far as possible, in which case the need to consider the interim custody of the vehicle may not normally arise. But if for any reason the authorities under the Act are not able to conclude the proceedings within the period of six weeks mentioned above, the interim custody of the vehicle shall be given to the owner on the conditions

specified earlier. It is also made clear that to avoid any controversy and the allegations of undue delay on the part of either party to the proceedings, the competent authority shall put the owner on notice within a period of three days of the date of seizure and the owner or any other person interested in the vehicle shall file his objections to the confiscation within a week thereafter."

5. In the above circumstances, the petitioner is set at liberty to approach either the 1st respondent or the Judicial Magistrate having jurisdiction over the area, by virtue of the enabling provision under the proviso to Sub section (2) of Section 23A for getting interim custody, till finalisation of the confiscation proceedings. On filing petition as above, it will be for the concerned Magistrate to deal with the same and to pass appropriate orders in the light of the above observations within 'two weeks'. The adjudication proceedings shall be finalised, in accordance with law, as expeditiously as possible, at the earliest, at any rate, within 'six weeks' from the date of receipt of a copy of this judgment. Prosecution proceedings shall be pursued in accordance with law declared by the Division Bench of this Court in **Sujith Vs. State of Kerala (2012 (2) KLT 547)**.

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The additional 3rd respondent shall file a report as to the outcome of the memo dated 04.02.2015 produced along with report of the District Police chief dated 09.02.2015, before the Registrar General of this Court without any delay.

The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent for further steps.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

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