
(2014) 08 KL CK 0099
In the High Court Of Kerala
Case No : Crl. M.C. No. 138 of 2014

Althaf	Vs	APPELLANT
State of Kerala		RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 293, 482
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 20

Citation : (2014) 3 KHC 621

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : Mansoor B.H, Advocate for the Appellant; S. Hyma, Public
Prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This Criminal Miscellaneous Case is filed by the petitioner, who is the accused in Crime No. 2090/2013 of North Paravoor Police Station, to quash the proceedings under Section 482 of the Code of Criminal Procedure. It is alleged in the petition that the petitioner has been arrayed as the accused in Crime No. 2090/2013 of North Paravoor Police Station for the offence punishable under Section 20 of the Kerala Protection of River Banks and Regulation of Sand Mining Act, 2001 (hereinafter referred to as "the Sand Act"). The allegation against the petitioner was that on 16/11/2013 at about 5.40 p.m. he was found transporting river sand in a lorry bearing Reg. No. KL41-G-691 without any authority and thereby he had committed the offence. The nature of sand was challenged by the petitioner and on the basis of the application filed by the petitioner before Court below, sample of the sand seized was sent for analysis and Annexure-B report of the Directorate of Mining and Geology Department was obtained, in which it was stated that what was transported is not river sand, but ordinary sand. If it is ordinary sand, then the provisions of the Sand Act will not be applicable and so no offence has been committed under the Sand Act and proceeding with the case is only an abuse of process of Court. So the petitioner

has no other remedy except to approach this Court seeking the following relief:

To quash Annexure-A FIR and all further proceedings in Crime No. 2090/2013 of North Paravoor Police Station.

2. Heard the counsel for the petitioner and the learned Public Prosecutor.

3. The counsel for the petitioner submitted that in view of the fact that the report says that it is not river sand, then prosecution under the above Act is not maintainable and the same is liable to be quashed.

4. The learned Public Prosecutor submitted that at the time when the seizure was effected, it was suspected to be river sand and on that basis, the case was registered and other is a matter for evidence which cannot be considered at this stage. It is an admitted fact that at the time when the petitioner was found transporting sand (according to the prosecution it is river sand, but according to the petitioner is not river sand), the police bona fide believed that it is river sand, that is being transported without any documents and seized the vehicle with sand and registered Annexure-A First Information Report as Crime No. 2090/2013 of North Paravoor Police Station alleging offence under Section 20 of the Sand Act. It is also an admitted fact that on the basis of the application filed by the petitioner; sample of the sand seized was sent for analysis and Annexure-B report from the Senior Chemist, Chemical Lab, Directorate of Mining and Geology was obtained, in which it was mentioned that it is ordinary sand (sand excavated from places other than stream). In order to attract the provisions of the Sand Act, it must be prima facie proved that the sand found is river sand. Further, the Sand Act regulates protection of river banks and indiscriminate removal of sand from the river and river banks and it was with that intention that the Sand Act has been enacted and the object of the Sand Act is to protect river banks and river beds from large scale dredging of river sand and to protect their biophysical environment system and regulate the removal of river sand and for matters connected therewith or incidental thereto. Further, the scheme of the Sand Act will go to show that it was intended to protect only indiscriminate excavation of river sand from the river beds and dredging of sand from the river so as to protect the environment. The scheme also provides that in order to extract sand from the river beds, certain regulations have to be made and permission will have to be obtained for that purpose from the authorities concerned. So, it is clear from the scheme of the Sand Act that it was intended to protect and regulate indiscriminate mining of sand from river beds and dredging of sand from the river or stream and not other sand. It is seen from Annexure-B report that what is seen in the lorry is ordinary sand and not river sand or sand from the stream. If that be so, the provision of the Sand Act will not be applicable and any sand transported in violation of any other law, though may be an offence under that Act or law and not under this Act. Further, the certificate issued by the authority can be relied on by the Court even without evidence under Section 293 of the Code and even if trial is allowed to be conducted, it will not going to improve the case of the prosecution. In view of the above

discussions, this Court feels that allowing further proceedings in the above crime to continue will only amount to abuse of process of Court and power under Section 482 can be invoked to quash the proceedings.

So, this petition is allowed. Further proceedings in Crime No. 2090/2013 of North Paravoor Police Station registered against the petitioner under Section 20 of the Sand Act is quashed. But it is made clear that this order will not a bar for the authorities to initiate appropriate proceedings against the petitioner, if they feel that it will violate any other law, then proceed against the petitioner in accordance with law.

Office is directed to communicate this order to the concerned Magistrate so as to inform the concerned Police Station for further necessary action in this regard.