
(2016) 09 KL CK 0054
In the High Court Of Kerala
Case No : Crl. M.C. No. 4886 of 2013

Basheer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Kerala Minor Mineral Concession Rules, 2015 — Rule 58(1)
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 12(10), Section 12(3), Section 20

Citation : (2017) 2 ILRKerala 69 : (2017) 1 KLT 594

Hon'ble Judges : Mrs. Mary Joseph, J.

Bench : Single Bench

Advocate : Sri. S. Mohammed Al Rafi, Advocate, for the Petitioner; Sri. K.B. Udhayakumar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mrs. Mary Joseph, J.—The entire proceedings in S.T.No.190/2013 pending on the files of the Judicial First Class Magistrate Court, Vaikom is sought to be quashed by the accused therein. The case alleged by the prosecution against him was that, on 03.02.2012 at about 11.30 am, he had transported river sand in a Mini Tipper Lorry bearing Reg.No.KL-17C/6175, unauthorisedly. The vehicle was intercepted by the Police on the day, at S.N. Junction, Vettikattumukku, Thalayolaparambu - Ernakulam Road, on detection of the act as alleged Crime No.103/2012 was registered for the offences punishable under Section 12(3) & (10) read with Section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short "the Act"). Consequent to the registration of the crime, the Sub Divisional Magistrate, Pala was directed to confiscate the sand and the vehicle. Before the Sub Divisional Magistrate, an application was placed by the petitioner, requesting to release the vehicle, on the ground that river sand was transported on the strength of valid documents of authorisation like pass, tax invoice and delivery note. The said documents were also produced by the petitioner before the Sub Divisional Magistrate, the

authenticity of which was directed to be verified by the Commercial Tax Officer, Chittoor and Sub Inspector of Police, Thalayolaparambu. The Sub Divisional Magistrate verified the documents and found those to be genuine ones. Accordingly, the transportation of sand by the petitioner was found legal. But, a penalty of Rs.5,000/- was imposed on him, on the sole reason of non-production of documents at the time of inspection. The vehicle was released as per proceedings No.G1-515/2012/K.Dis dated 17.02.2012 of the Sub Divisional Magistrate, Pala. It is in such circumstances that the petitioner has approached this Court, with a prayer to quash the proceedings initiated by the Sub Divisional Magistrate against him as per proceeding No.G1- 515/2012/K.Dis in S.T.NO.190/2013.

2. Sri. S. Mohammed Al Rafi and Sri. K.B. Udayakumar, the respective counsel appearing for the rival parties argued vehemently to substantiate their stand.

3. The argument of Sri. S.Mohammed Al Rafi, the learned counsel representing the petitioner was that the transportation of river sand having been found legal on the basis of the documents conferring the authority produced before the Sub Divisional Magistrate and in the event of its" authenticity having been established, the Sub Divisional Magistrate is perfectly unjustified in imposing a fine of Rs.5,000/- on the petitioner, while putting an end to the proceedings initiated by him. According to him, the order imposing penalty of Rs.5,000/- will not sustain on account of the incorrectness, impropriety and illegality involved therein.

4. Sri. K.B. Udhayakumar, the learned Public Prosecutor submitted on the contrary that the imposition of penalty is perfectly justified in view of the belated production of the same.

5. I have gone through the materials and found substance in the argument advanced by the learned counsel for the petitioner. The Sub Divisional Magistrate has imposed a penalty of Rs.5,000/-, after having been convinced of the authenticity of the documents conferring authority upon the petitioner to do the alleged activity. Certified copies of certain documents are also found produced along with the petition, numbered as Annexures A to C and those include copies of the FIR No.103/2016 of Thalayolaparambu Police Station, the complaint filed before the Judicial First Class Magistrate Court, Thalayolaparambu under Section 190(1)(a) of the Code of Criminal Procedure and the proceedings No.G1-515/2012/K.Dis dated 17.02.2012 of the Sub Divisional Magistrate, Pala.

6. The allegation against the petitioner as revealed from Annexure A was that on 03.02.2012, at about 11 am, one Basheer, S/o Alikunju, Chothi Kunnath House, Vellur village, Vadakara was engaged in transporting river sand of about 100 feet unauthorisedly in a Mini Tipper Lorry bearing Reg.No.KL-17C/6175 at S.N.Junction, Vettikattumukku, Thalayolaparambu - Ernakulam Road. It is convincingly established from the Delivery Note and Form 8(B) Tax Invoice produced by the petitioner before the Commercial Tax Officer, Chittur that the

alleged illegal transportation of sand was legal and the factum was reported by the latter to the Sub Divisional Magistrate, Pala. Accordingly, Annexure C was issued. It is also endorsed in Annexure C, based on the information from the Thalayolaparambu Police Station, at whose instance the seizure was made that none of the documents were made available at the time of seizure of the vehicle with the sand loaded therein, and accordingly Rs.5,000/- was imposed on the petitioner as fine under Rule 58(1) of the Kerala Minor Mineral Concession Rules, (for short "the Rules") for causing the Mini Tipper Lorry bearing Reg.No.KL-17C/6175 released to him. The aggrieved petitioner has assailed the order.

7. Indisputably, it is openly declared in Annexure C by the official concerned that the petitioner was not guilty of the allegations levelled against him as per Annexures A and B. The petitioner had succeeded in overturning the allegation of the prosecution and convincingly establishing that he was not guilty of the offences allegedly levelled against him. The Sub Divisional Magistrate, Pala has also held after getting convinced of the authenticity of the documents produced by the petitioner that the transaction alleged was legal. Expressed in better terms, the allegations turn out to be unsustainable ones and in the said circumstances, the only option left to the Sub Divisional Magistrate is to let the petitioner free without imposing punishment of any nature.

8. It could be gathered from Annexure C that rather than letting the petitioner free, the Sub Divisional Magistrate, Pala, by Annexure C proceedings imposed a penalty of Rs.5,000/- on him for non-production of the documents of authority at the time of seizure of the vehicle with the contraband. It seems from Annexure C that the Sub Divisional Magistrate, Pala had taken shelter under Rule 58(1) of the Rules in justification of his act.

9. The learned counsel uncompromisingly urged that the impugned Annexure C proceedings has no legal backing as Sub-rule (1) of Rule 58 of the Rules does not provide for that and it is apposite to extract the same hereunder:-

"58. Submission of Progressive Quarry closure Plan -(1) The owner or agent or manager or mining engineer shall, in case of fresh grant of renewal of quarrying lease, submit a progressive quarry closure plan as the component of mining plan to the competent authority.

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

(5) xxxxxx and such approval shall be subject to final decision whenever communicated."

10. It is clear from a reading of Rule 58 (1) that it does not contemplate imposition of penalty in a circumstance of the nature. It envisages a totally

different context and has no bearing on the factual situation on hand. The authorities, neither under the Act, 2001 nor the Rules, are empowered to impose penalty for causes not provided for, at their whims and fancies. When the documents of authorisation are not produced at the spot of seizure, it only takes its recourse to register a case against the person responsible for the act detected. The production of the documents of authority at a later point of time would only help to treat the transaction legal and to avoid further pursuit of the matter. Therefore, imposition of penalty as per Annexure C proceedings is clearly an arbitrary exercise of power, unheard of law and is violative of the principles of natural justice. As rightly put by the learned counsel for the petitioner, Annexure C proceedings to the extent it imposes penalty on the petitioner lack legal support and therefore, is vitiated. The proceedings to the extent it imposes penalty of Rs.5,000/- on the petitioner as condition precedent for releasing the vehicle and sand needs to be set aside.

11. In the result this Crl.M.C. stands allowed. Annexures A and B and all further proceedings pursuant to that in S.T.No.190/2013 on the files of the Judicial First Class Magistrate Court, Vaikom and Annexure C to the extent it directs the petitioner to pay a penalty of Rs.5,000/- are quashed forthwith. The vehicle with the sand is directed to be released to the petitioner forthwith, unconditionally.