

(2015) 02 KL CK 0015

In the High Court Of Kerala

Case No : Writ Petition(C). No. 5852 of 2015 (F)

C.N. Rajan

APPELLANT

Vs

The Sub Inspector of Police and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 23

Citation : (2015) 02 KL CK 0015

Hon'ble Judges : P.R. Ramachandra Menon, J.

Bench : Single Bench

**Advocate : P.M. Ziraj, for the Appellant; K.C. Vincent, Government Pleader,
Advocates for the Respondent**

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J.—The petitioner is the owner of the vehicle bearing No. KL-33-2948. The said vehicle was seized by the 1st respondent alleging illegal transportation of river sand in violation of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. The case of the petitioner is that, he had not transported river sand, but "ordinary sand". Immediately after seizure of the vehicle, the petitioner approached the second respondent and requested to test the sample of sand with the fourth respondent. But the second respondent did not consider the request and hence the writ petition.

2. Heard the learned Government Pleader as well.

3. A Full Bench decision of this Court in Shan Vs. State of Kerala, has laid down the manner in which applications for interim custody should be dealt with. Operative portion of the said judgment as contained in paragraphs 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."

4. The first respondent is directed to report the seizure to both the second respondent and also to the concerned Judicial First Class Magistrate, having jurisdiction over the area forthwith. The second respondent is directed to take sample of sand in presence of the petitioner and sent it for analysis and report to the competent authority. The request of the petitioner for interim custody, if any, shall be considered by the second respondent, in accordance with the law declared by the Full Bench of this Court as per the decision cited supra, as expeditiously as possible, at any rate within "two weeks" from the date of receipt of a copy of this judgment. The matter shall be finally disposed of within "six weeks" from the date of receipt of a copy of this judgment, after obtaining the analysis report of the sand tested by the competent authority. Prosecution proceedings shall be pursued in accordance with the law declared by the Division Bench of this Court in *Sujith Vs. State of Kerala*, .

5. After testing, if it is revealed that the commodity transported by the petitioner is not "river sand" and if the offence made out is only under the relevant provisions of Mines and Mineral (Development and Regulation) Act, 1957 or the Kerala Minor Mineral Concession Rules, 1967, an opportunity for compounding the offence shall be given to the petitioner, if so desired; subject to satisfaction of a sum of Rs. 25,000/-. On such event, once the offence under the MMDR Act/KMMC Rules is compounded and no other offence is involved, no further prosecution will lie against the petitioner, in view of the position made clear by this Court in *Digil Vs. Sub Inspector of Police*, .

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

is disposed of.