
(2012) 07 KL CK 0013
In the High Court Of Kerala
Case No : Criminal M.C. No. 2201 of 2012

P.M. Sumesh

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 482
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 22, 23, 25, 4(1A)

Citation : (2012) 4 KLJ 635

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Renjith Thampan, M.V. Anandan and P.R. Reena, for the Appellant;
R. Ranjith, (PP), for the Respondent

Judgement

S.S. Satheesachandran, J.—Annexure VII report filed by the Sub Inspector of Police, Peramangalam Police Station imputing offences u/s 4(1A) read with Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957, for short, the "Act", and Rule 58 of the Minor Mineral Concession Rules 1967, for short, the "Rules" against the petitioner, is challenged in this petition invoking the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, for short, the "Code". Annexure II FIR was registered against the petitioner for the offences referred to above under the Act and Rules, pursuant to an inspection conducted by the Sub Inspector of Police, Peramangalam Police Station on 27.04.2011 in a property owned by him, wherein he had stored about 100 loads of river sand, allegedly, in violation of the aforesaid Act and Rules. That crime registered, after inspection, has led to the filing of Annexure VII report indicting him of the offences stated, u/s 173(2) of the Code.

2. Counsel for the petitioner submits that he had a license issued under the Rules to store and sell ordinary sand. Validity of that license was upto 31.03.2011. Annexure I is the copy of that license. In view of the General Election declared, according to the petitioner, there was some administrative delay in renewing his

license. At the time of the expiry of the validity of Annexure I license, 627 metric tones of ordinary sand remained in his yard. What remained in the yard, which he had stored as per the valid license issued under the Rules, has been seized by the Sub Inspector of police, and the crime was registered for offences under the Act and Rules as if he had violated the provisions thereunder, and, thus, committed the offences imputed. The learned counsel for the petitioner would submit that since there was delay in the renewal of his license, he had approached this Court with a writ petition, and pursuant to the orders passed thereunder, his application for renewal from the date of expiry of his previous license was considered by the licensing authority, and Annexure VI is the order passed thereof. Though renewal was not granted from the date of expiry of the prior license, the licensing authority, as per the records produced by him, has unequivocally stated that whatever sand stored by him in his yard, which had been seized by the police and that led to registration of Annexure II FIR was what remained with him during the operation of Annexure I license and he had produced valid records before the licensing authority over the collection and storage of that quantity of sand as well. Licensing authority, Senior geologist, has also addressed the Sub Inspector of police under Annexure IV that the quantity of sand kept by him in his yard formed part of sand collected by him under a valid license, but, the license which expired had not been renewed. On the aforesaid factual aspects itself petitioner could not be imputed of having committed any offence under the Act and Rules, is the submission of the counsel pointing out that there is no provision under the Act and Rules as and when the license period is over to dispose or hand over the balance quantity of sand which had been collected but remained with the licensee. The learned counsel for the petitioner also contended that Annexure VII report filed u/s 173(2) of the Code in relation to a license covered by the Act and Rules and the cognizance of the offences on such report taken by the Magistrate, both are bad in law, and in fact, violative of the mandatory provisions covered by Section 22 of the Act. Reliance is placed on Ismayil Vs. State of Kerala, to contend that the police report filed u/s 173 (2) of the Code cannot be treated as a complaint from an authorised person, on which alone cognizance of the offences under the Act and Rules could be taken as mandated u/s 22 of the Act. In such circumstances, cognizance taken on Annexure VII report has to be held to be illegal and the learned Magistrate be directed to pass orders for release of the sand seized from him in connection with the crime invoking the inherent jurisdiction of this Court u/s 482 of the Code, is the submission of the learned counsel. The fact that petitioner had a license, to store and deal with 6000 metric tones of sand, issued by the competent authority and the validity of such license remained till 31.03.2011 is not disputed. Similarly, the case presented by him as supported by the documents produced that the competent licensing authority has renewed his license but not for the period from the date of expiry of the previous license upto the date of renewal is also not under dispute. What has been stated by the licensing authority in the communication sent to the Sub Inspector Of Police in Annexure IV communication and; also in its order for renewal of the license

Annexure VI that the quantity of sand kept in his yard formed part of the sand collected by him previously during the period of license while it continued to be operative and valid and that he had produced records before the licensing authority over such quantity of sand as well, has not been assailed nor shown to be unacceptable for any reason whatsoever. When that be the case, on the factual aspects presented in the case whether he has committed any offence under the Act and Rules has to be examined. If we go by the provisions of the Act, it could be stated that if a person stores any mineral otherwise than in accordance with the provisions of the Act and Rules thereunder he could be imputed of having committed an offence u/s 4(1 A) of the Act. There is no provision in the Act or the Rules to dispose or hand over balance quantity of sand which formed part of the sand collected by him during the operation of a valid license, as and when the license period was over, cannot be canvassed as a ground to shield him from prosecution for an offence u/s 4(1A) of the Act which interdicts transportation or storage otherwise than in accordance with the provisions of the Act. In such circumstances, registration of the crime against the petitioner under Annexure II FIR where the storage of 627 metric tons of sand (100 loads), in his yard was found not in accordance with the provisions of the Act and Rules, since the license issued to him to deal or store that sand has already expired at that point of time, cannot be found fault with. However, in the investigation of the crime registered, mere, absence of the license for storage could not have been given much significance, without having reference to the communication sent by the Geologist, the licensing authority, and also subsequent orders passed for renewal of his license, in determining and forming a conclusion whether he has committed any offence under the Act and Rules. It appears that the investigation did not proceed in those lines, and as could be seen from Annexure VII report, non-having of a valid license for storing the sand in his yard when it was detected, and a crime registered, that alone, was given consideration to indict him, of the offences under the Act and Rules. Annexure IV communication of the licensing authority, to the investigating officer and also Annexure VI.order passed over the renewal of the license of the petitioner would indicate that the sand was stored during the period when his license remained alive, but continued to be retained, after expiry of the license. If that be SO, prosecution of the petitioner for the offences imputed may not be justified. Further more, as rightly contended by the learned counsel for the petitioner cognizance of the offences under the Act and Rules taken against the petitioner on a report filed u/s 173(2) of the Code by the Sub Inspector of Police is illegal and unsustainable, as it violates the mandatory prescription covered u/s 22 of the Act. That Section reads thus:

22. Cognizance of offences:- No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

No doubt the Sub Inspector is an authorised officer, who can file a complaint for

an offence, under the aforesaid Act; but, a report filed by him after investigation in a crime registered, as u/s 173(2) of the Code,; cannot be treated and considered as a complaint enabling the court to take cognizance of the offence stated thereunder. This Court has held in Ismayil's case (cited supra) that a police report filed u/s 173(2) of the Code imputing an offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 for short, the "Sand Act" cannot be treated as a complaint in view of the mandatory prescriptions covered by Section 25 of that Act. Section 25 of the Sand Act and Section 22 of the Act is more or less paramateria except as to who are the competent persons empowered to file a complaint in relation to the offences under the, respective Act. What has been dilated upon with reference to taking of cognizance on a police report and also whether it could be treated as a complaint in relation to the mandatory prescriptions covered by Section 23 of the Sand Act by this Court in Ismayil's case, cited supra, is applicable to in considering the challenge against the cognizance taken by the learned Magistrate on a report for an offence under the Act as well. Annexure VII report filed by the Sub Inspector of Police u/s 173(2) of the Code imputing the offences u/s 4(1A) read with Section 21 of the Act and Rule 58 of the Rules against the petitioner cannot be treated as a complaint, and cognizance taken on such report for the aforesaid offences against the petitioner by the learned Magistrate as it flouts the mandatory prescription u/s 22 of the Act, is patently illegal and unsustainable. Cognizance of the offences taken against the petitioner under Annexure VII report by the Magistrate is therefore quashed ordering cessation of all further proceedings therefrom in exercise; u/s 482 of the Code. The learned Magistrate shall pass appropriate orders for release of the sand seized in connection with the crime in accordance with law.

Crl. M.C. is disposed of.