

(2014) 04 KL CK 0010
In the High Court Of Kerala
Case No : WP(C). No. 10361 of 2014 (U)

Rahmath

APPELLANT

Vs

The District Collector, The Revenue Divisional Officer, Palakka
dand The Sub Inspector of Police

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Citation : (2014) 04 KL CK 0010

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : K. Praveen Kumar, Advocate for the Appellant; K.A. Sanjeetha,
Government Pleader, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Alexander Thomas, J.—The petitioner is aggrieved by the seizure of the vehicle on the allegation that the vehicle was found transporting two sacks of river sand without any permit as contemplated under the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2002 and the rules framed thereunder. Being aggrieved by the same, the petitioner had earlier approached this Court by filing W.P.(C) No. 22717 of 2013, in which this Court as per Ext.P3 judgment dated 11.09.2013 had directed the Revenue Divisional Officer concerned to consider the application preferred by the petitioner for interim custody of the vehicle in view of the legal principles laid down by a Full Bench of this Court in the decision in Shan Vs. State of Kerala, . In pursuance to the compliance of the directions issued by this Court in Ext.P4 judgment, the District Collector had instructed the Village Officer, Pattambi to make a physical verification to ascertain as to whether there is river sand in the vehicle. The Village Officer, Pattambi as per Ext.P4 report reported that it was stated that there was two bags of river sand at the time of seizure; but at the time of inspection, the vehicle was seen kept in the Challissery Police Station and there is only = packet of sand in the vehicle.

2. It is submitted that the value of the vehicle has been fixed at Rs. 3,55,000/-, that the petitioner is not in a position to get the vehicle released after paying the 1/3rd of the value of the vehicle as cash deposit and that the financier of the vehicle had caused to send a lawyer notice to him directing to pay Rs. 80,000/- being the loan advanced for purchasing the vehicle. The learned counsel for the petitioner submits that a direction may be issued for grant of interim custody of the vehicle to the petitioner without payment of any such amount.

3. I am afraid that the above submission of the petitioner cannot be countenanced in view of the legal principles laid down by the aforementioned Full Bench decision of this Court in Shan Vs. State of Kerala, . In paragraphs 12 and 13 of the above said reported decision, the Full Bench has issued the following directions:

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. It is categorically directed in the aforementioned Full Bench decision that the interim custody of the vehicle can be granted only on condition that the owner of the vehicle should deposit in cash at least 30% of the value of the vehicle as determined by the competent authority under the Motor Vehicles Act and that the owner of the vehicle should provide either a bank guarantee or immovable property security for the balance amount of the vehicle.

5. The learned counsel for the petitioner submits that a direction may be issued to the 2nd respondent Revenue Divisional Officer to finalise the confiscation proceedings pertaining to the petitioner's vehicle without any further delay. It can be seen that by the judgment dated 11.09.2013 in W.P.(C) No. 22717 of

2013, this Court has already directed the respondents that adjudication shall be finalised within six weeks after the issuance of orders relating to the grant of interim custody of the vehicle to the petitioner and it is further made clear that the respondent concerned can take appropriate steps in connection with prosecution proceedings as made clear by the Division Bench of this Court in the decision in Sujith Vs. State of Kerala, , if the offence is made out.

6. It is brought to my notice by the learned Government Pleader that the competent authority to pass final orders on the confiscation proceedings is the 2nd respondent.

7. Accordingly, it is ordered that the 2nd respondent shall pass final orders on the confiscation proceedings within a period of six weeks from the date of production of a copy of this judgment. A reasonable opportunity of being heard may also be afforded to the petitioner before the final order is passed. The specific contention of the petitioner that there was no sand in the intercepted vehicle in question at the time of the seizure of the vehicle should also be specifically adverted to and considered by the 3rd respondent.

With the above observations and directions, this writ petition stands finally disposed of.