

(2014) 04 KL CK 0016
In the High Court Of Kerala
Case No : Crl. M.C. No. 1525 of 2014

Shiju

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —
Section 17(4), 20

Citation : (2014) 2 KLJ 746 : (2014) 2 KLT 473

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : V.M. Ali, Advocate for the Appellant; P. Sareena George, Public Prosecutor, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—This application filed by the accused in C.C. No. 75/2014 on the file of the Judicial First Class Magistrate Court, No. I, Aluva, to quash the proceedings u/s 482 of Code of Criminal Procedure. It is alleged in the petition that petitioner is a dealer in minor minerals including ordinary sand. He has stock yard at Athani, he obtained Annexure-I licence of dealership from Mining and Geology Department for this purpose. Ever since, he has been doing business in minor minerals, he has not violated the terms of the licence. While so, the second respondent on 9.4.2013 at about 12.10 p.m. came to the shop of the petitioner and seized 120 feet sand stacked in the yard of the petitioner alleging that it is a river sand and registered a case against the petitioner under Kerala Protection of River Banks and Regulation of the Removal of Sand Act, 2001 as Amended in 2013 Act as Crime No. 370/13 and thereafter, without conducting any proper enquiry, he filed final report before the Judicial First Class Magistrate Court, No-I, Aluva and that was taken on file as C.C. No. 75/14 by that court. He questioned the act of the second respondent and the sand was sent for analysis to ascertain the nature of sand at the request of the petitioner by the second

respondent and Annexure-6 report was obtained which shows that, it is not a river sand but, ordinary sand. But, even before that, the second respondent has filed final report based on which the court has taken cognizance of the case. Now, the report obtained from the laboratory will go to show that it is not a river sand and ordinary sand for which petitioner is having licence to sell and he had not committed any offence. So, he has no other option except to approach this court seeking the following relief:

i) To quash Annexure V final report submitted by the 2nd respondent before Judicial First Class Magistrate Court-1, Aluva and cognizance was taken as C.C. No. 75/2014.

ii) Direct the 2nd respondent to release or return the sand seized from the stockyard of the petitioner, now being kept at the premise of Chengamanadu Police Station, to the petitioner forthwith.

2. On the basis of the allegations mentioned in the petition, a report has been called for from the investigating officer and he filed a report which reads as follows:

In this regard on 09.04.2013 Shri. Tomy Sebastian, Sub Inspector of Police, District Special Branch who was deputed by the District Police Chief, Ernakulam Rural seized about 120 feet of sand in-good faith as river sand keeping unauthorized for selling purpose as per Mahazar which was kept in the Sand Park running by the petitioner near the Durgadevi Temple at Athani. On the basis of this a case was registered in this Police Station in Crime 370/2013 u/S. 17(4) R/W 20 of Sand Act.

The investigation of the case was completed and submitted charge sheet before the J.F.C.M.C.I., Aluva on 10.4.2013. Meanwhile as per the direction from the Hon"ble J.F.C.M.C.I.; Aluva sample was collected from the seized sand and sent to the Director, Mining And Geology Department, Trivandrum for chemical examination. As such the result received in this police station on 4.10.2013 stating that the sample of the sand in question is identified as Ordinary Sand (Sand excavated from places other than stream).

After received the Analytical Report the petitioner submitted application before the Hon"ble J.F.C.M.C.I., Aluva for seeking direction to release the sand to the petitioner u/S. 451 Cr.P.C. The Hon"ble Court called upon report in this regard. On 20.1.2014 Police submitted a report before the Hon"ble Court stating the matter as said and for Hon"ble consideration.

Any direction/order from the Hon"ble Court has not been received so far.

3. Heard the Counsel for the petitioner and the learned Public Prosecutor.

4. The Counsel for the petitioner submitted that the crime itself was registered on the basis that, the sand stacked in the property was river sand and it was obtained without any proper documents. But, the report shows otherwise. So,

the petitioner has not committed any offence.

5. On the other hand, the learned Public Prosecutor submitted that, the final report was filed before the report of analysis was obtained but, opposed the application contending that the contentions can be raised by the petitioner before the court below. It is an admitted fact that on 9.4.2013, the second respondent conducted inspection of the yard of the petitioner and seized 120 feet of sand kept in the yard on the assumption that it was river sand and Annexure 5 complaint was filed alleging that he was keeping river sand in violation of the provisions of the Kerala Protection of River Banks and Regulation of the Removal of Sand Act, 2001 as amended by Amendment Act of 2013. On the basis of the objection raised by the petitioner, second respondent sent sample of the sand for analysis to Mining and Geology Director and after examination, they sent Annexure 6 report which will go to show that it is identified as ordinary sand (sand excavated from places other than stream). So, it is clear from this, that it is not a river sand and the Act mentioned above will apply only to river sand and not other sand. Further, Annexure 1 will go to show and he having licence to conduct dealership on ordinary sand which was issued from the Department of Mining and Geology and that was valid up to 30.9.2013. The seizure in this case was effected on 9.4.2013. So, he was having proper licence to stack ordinary sand at that time. Considering the fact that the sand seized was not river sand and it was ordinary sand, there is some force in the submission made by the Counsel for the petitioner that no offence under the provisions of the above Act has been committed by the petitioner as the sand seized is not river sand but it is an ordinary sand possession for which he is having Annexure-I licence issued by the concerned department. The prosecutor had no case that he had violated the conditions of that licence. So under the circumstances, no offence u/s 17(4) read with Section 20 Kerala Protection of River Banks and Regulation of the Removal of Sand Act, 2001 as amended by Amendment Act of 2013 has been committed by the petitioner and the proceedings against him is liable to be quashed. The second respondent who is in possession of the sand seized is directed to return the same to the petitioner.

With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court immediately.