

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 31ST DAY OF OCTOBER 2013/9TH KARTHIKA, 1935

WP(C).No. 26046 of 2013 (E)

PETITIONER(S):

**ABDUL RAHIMAN, AGED 32 YEARS,
S/O.ABOOBACKER, VELLARAMPARA HOUSE,
P.O.PANNIPARA, (VIA) EDAVANNA,
MALAPPURAM DISTRICT, PIN-676 541.**

**BY ADVS.SRI.K.A.SHAMSUDEEN
SRI.K.J.MOHAMMED ANZAR**

RESPONDENTS:

- 1. THE DISTRICT COLLECTOR,
MALAPPURAM, PIN-676 505.**
- 2. THE HEAD QUARTERS DEPUTY TAHSILDAR,
ERANADU TALUK OFFICE, ERANADU, MANJERI,
PIN-676 121.**
- 3. EDAVANNA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
GRAMA PANCHAYATH OFFICE, EDAVANNA,
MALAPPURAM DISTRICT, PIN-676 541.**

***ADDL.R4 IMPEADED:**

**R4. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA,
MALAPPURAM DISTRICT - 676 505.**

**(*ADDL.R4 IS IMPEADED AS PER ORDER DTD. 31/10/2013 IN
I.A.NO.14498/2013)**

R1, R2 & ADDL.R4 BY GOVERNMENT PLEADER SMT. LILLY K.T.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-10-2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Kss

WP(C).No. 26046 of 2013 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1** **COPY OF THE R.C.PARTICULARS BEARING REG.NO.KL-10 AM/8097 OWNED BY THE PETITIONER.**
- EXT.P2** **COPY OF THE PASS ISSUED BY THE EDAVANNA GRAMA PANCHAYATH DATED ON 19.10.2013.**
- EXT.P3** **COPY OF THE SCHEDULE DATED 19.10.2013 MAINTAINED BY THE PANCHAYATH.**
- EXT.P4** **COPY OF THE MAHAZAR DATED 19.10.2013 PREPARED BY THE HEAD QUARTERS DEPUTY TAHSILDAR,ERANADU TALUK OFFICE,MANJERI.**
- EXT.P5** **COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE TALUK OFFICE, ERANADU, MALAPPURAM DISTRICT DATED ON 21.10.2013.**

RESPONDENT(S)' EXHIBITS:

N I L

/TRUE COPY/

PA.TO JUDGE

Kss

P.R.RAMACHANDRA MENON, J.

W.P(c) No. 26046 OF 2013

Dated this the 31st day of October, 2013

JUDGMENT

Petitioner is the owner of the vehicle bearing registration No.KL-10AM/8097 and the said vehicle has been detained on the allegation that the petitioner has committed the offence under Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002. The learned counsel for the petitioner submits that absolutely no offence has been committed by the petitioner under the relevant provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Rules, 2002 and that transportation was supported by valid pass and other relevant documents as discernible from Ext.P4 seizure mahazar itself. The allegation levelled against the petitioner is in respect of the alleged “route deviation” and the time expiry of the pass. It is pointed out that, eventhough the pass was issued at 9.15 a.m., the vehicle could get its turn and sand was loaded only by 2.50 p.m. as

discernible from Ext.P2 itself. According to the petitioner, he has approached the second respondent by filing Ext.P5 application to release the vehicle pointing out these vital facts, but till this date, no action has been taken by the said respondent and hence the writ petition.

2. Heard the learned Government Pleader as well.

3. A Full Bench of this Court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 =2010(3)KLT 413]** has laid down the manner in which such applications for interim custody should be dealt with. Therefore, all that is necessary in the Writ Petition is to direct that the statutory authority, before whom the application for interim custody is pending, shall deal with the application in the light of the provisions of the Act referred above and in the manner as directed by the Full Bench of this Court in the judgment referred as above. Operative portion of the said judgment as contained in paragraph 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. But coming to the instant case, it is seen that the vehicle was given pass to transport river sand from Edavanna to Perinthalmanna, via Manjeri and Mankada. The specific case of the petitioner is that, there are two routes to reach Perinthalmanna from Edavanna. In the route through Manjeri, beautification work/maintenance work is going on and that there is heavy traffic jam, which made the petitioner's vehicle to take the alternate route. This Court is of the firm view that 'route deviation' by itself can't attract any offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act and there is considerable force in the submission made by the learned counsel for the petitioner in this regard.

5. Another important aspect to be noted is that, eventhough Ex.P2 pass was issued by the 3rd respondent Panchayath at 9.15 a.m. on 19.10.2013, the vehicle entered the 'Kadavu' only by 11.20 a.m. and it commenced the journey only at 2.50 pm; as disclosed from Ext.P3

Schedule of Register maintained by the 3rd respondent. The fact that the vehicle started its journey only by 2.50 p.m. on 19.10.2013 and that the pass was valid for a period of “ 1 ½ hours” is discernible from Ext.P2 pass itself. If so, the pass was valid till 04.20 p.m. But the seizure is at 03.25 p.m. on 19.10.2013 as evident from Ext.P4 Mahazar. If the entries are correct, no offence can be mulcted on the shoulders of the petitioner, as alleged.

6. In the above circumstances, the additional fourth respondent is directed to verify the factual particulars from the fourth respondent Panchayath forthwith and if found correct, the vehicle shall be released immediately; at any rate, within one week. If there is material discrepancy in Ext.P2 and P3 or if pass is not genuine, appropriate orders shall be passed for releasing interim custody of the vehicle in terms of the verdict passed by the Full Bench of this Court in **Shan C.T. v. State of Kerala [2010 (3) KHC 333 =2010(3)KLT 413]**, followed by finalization of the proceedings in terms of the directions given by a Division Bench of this Court in **Sujith v. State of Kerala (2012 (2) KLT 547).**

The petitioner will produce a copy of this judgment along with a copy of the Writ Petition before the additional fourth respondent for prompt compliance.

Writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

SV

P.R.RAMACHANDRA MENON
JUDGE

SV.

