

Biju Devan a Vs. the S.i. of Police, Kottiyam Police Station

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Court : Kerala

Decided On : Aug-02-2013

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : Biju Devan a

Respondent : The S.i. of Police, Kottiyam Police Station

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON FRIDAY, THE 2ND DAY OF AUGUST 2013 11TH SRAVANA, 1935 WP(C).No. 19283 of 2013 (I) ----- PETITIONER(S): ----- BIJU DEVAN A., AGED 4 YEARS S/O.ARAVINDAKSHAN, RESIDING AT ASWATHY, KARAMCODE P.O. KALLUVATHUKKAL VILLAGE, KOLLAM TALUK KOLLAM DISTRICT (OWNER OF LORRY BEARING REGISTRATION NO.KL-02-7803) BY ADV. SRI.P.M.ZIRAJ RESPONDENT(S)/ ----- 1. THE SUB INSPECTOR OF POLICE, KOTTIYAM POLICE STATION, KOLLAM DISTRICT PIN

571.

2. THE REVENUE DIVISIONAL OFFICER, KOLLAM, KOLLAM DISTRICT,PIN

013.

3. THE DISTRICT COLLECTOR, KOLLAM DISTRICT, CIVIL STATION, KOLLAM
PIN

013.

4. THE DIRECTOR, MINING AND GEOLOGY, OFFICE OF THE MINING AND
GEOLOGY KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM

001. BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE THIS WRIT
PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02-08-2013, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: tss WP(C).No.
19283 of 2013 (I) ----- APPENDIX PETITIONER(S)'
EXHIBITS ----- EXHIBIT P1. TRUE COPY OF THE SAID
SEIZURE MAHAZAR DATED 29 07.2013 PREPARED BY THE FIRST
RESPONDENT. EXHIBIT P2. TRUE COPY OF THE RETAIL INVOICE DATED 29
07.2013 FOR TRANSPORTATION OF WEATHERED ROCK SAND ISSUED BY
ASAND LEADER. EXHIBIT P3. TRUE COPY OF THE APPLICATION DATED 30
07.2013 SUBMITTED BY THE PETITIONER BEFORE THE SECOND
RESPONDENT. RESPONDENT(S)' EXHIBITS ----- NIL
TRUE COPY P.A. TO JUDGE tss P.R. RAMACHANDRA MENON, J.

.....: W.P.(C). No. 19283 of 2013
..... Dated this the 2nd day of August, 2013
JUDGMENT The petitioner is the owner of the vehicle bearing No. KL- 02-7803.
The said vehicle was seized by the 1st respondent on 29.07.2013 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. Ext.P1 is the seizure
mahazar prepared by the 1st respondent. The case of the petitioner is that, he had
not transported river sand but weathered rock sand which was transported with
valid retail invoice issued by the dealer as borne by Ext.P2. The learned counsel
for the petitioner submits that the 1st respondent did not produce the vehicle
before the 2nd respondent for adjudication. Ext.P3 is the application preferred
before the 2nd respondent for redressal of the grievance. But nothing transpired in
the positive and hence the writ petition.

2. Heard the learned Government Pleader as well.

3. After hearing both the sides, this Court finds that the W.P.C. No. 19283 of 2013 -2- proceedings shall be finalized after obtaining the analysis report of sand tested in a competent laboratory. In the said circumstance, the 2nd respondent is directed to release the vehicle to the petitioner subject to the satisfaction of the conditions as per the Full Bench decision of this Court as reported in Shan C.T. v. State of Kerala [2010 (3) KHC 33.=2010(3)KLT 413.where the manner in which application for interim custody should is dealt with. 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 W.P.C. No. 19283 of 2013 -3- 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 made clear that, on final adjudication, if it is proved that the petitioner was transporting 'river sand' in contravention of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, further proceedings shall be

pursued in accordance with the law declared by Division Bench of this Court in Sujith V State of Kerala (2012 (2) KLT 547). The application for interim custody shall be considered W.P.C. No. 19283 of 2013 -4- and the vehicle shall be released to the petitioner within two weeks. The petitioner shall produce a copy of this judgment along with a copy of the Writ Petition before the 2nd respondent for further step. Writ petition is disposed of. P.R. RAMACHANDRA MENON, JUDGE.
kp/-

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