

Saneesh Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Apr-25-2014

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Saneesh Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE FRIDAY, THE 25TH DAY OF APRIL 2014 5TH VAISAKHA, 1936 CrI.MC.No. 2348 of 2014 () ----- CMP.531/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NADAPURAM. CRIME NO. 53/2014 OF KUTTIADY POLICE STATION, KOZHIKODE DISTRICT. PETITIONER/PETITIONER: ----- SANEESH KUMAR, S/O.NARAYANAN, KODERIKANDY HOUSE, POOLAKKOL P.O., VATAKARA TALUK, KOZHIKODE DISTRICT. BY ADVS.SRI.K.ABDUL JAWAD, SRI.MATHEW A. KUZHALANADAN, SMT.VINEETHA V.KUMAR. RESPONDENTS/STATE & COMPLAINANT: ----- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. SUB INSPECTOR OF POLICE, KUTTIADY, KOZHIKODE DISTRICT-673 020. BY PUBLIC PROSECUTOR SRI. ABHIJETT LESSLI. THIS CRIMINAL MISC.

CASE HAVING COME UP FOR ADMISSION ON 2504-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. CrI.MC.No. 2348 of 2014
APPENDIX PETITIONER'S ANNEXURES:- ANNEX A:- TRUE COPY OF THE CERTIFICATE OF REGISTRATION NUMBERED AS KL-18-D-6864. ANNEX B:- TRUE COPY OF THE GOODS CARRIAGE PERMIT NO P.GD182746/2013, DATED 2811/2013. ANNEX C:- TRUE COPY OF THE PETITION, NUMBERED AS CMP. 531/2014 SUBMITTED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NADAPURAM. ANNEX D:- CERTIFIED COPY OF THE

ORDER

DATED 2501/2014 IN CMP.531/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NADAPURAM. RESPONDENT'S ANNEXURES:- NIL.
//TRUE COPY// P.A. TO JUDGE rs. A.M.SHAFFIQUE, J.

----- CrI.M.C.No. 2348 of 2014
----- Dated this the 25th day of April, 2014

ORDER

The petitioner challenges order dated 25.01.2014 in C.M.P.No.531 of 2014 of the Judicial First Class Magistrate's Court, Nadapuram in Crime No.53 of 2014 of Kuttiady Police Station.

2. The vehicle bearing registration No.KL - 18 D/6864 belonging to the petitioner has been seized by the police. When the petitioner approached the Magistrate seeking for interim custody of the vehicle the same came to be dismissed on the ground that the Investigating Officer has produced the vehicle before the SDM for confiscation proceedings. Apparently the procedure adopted by the Investigating Officer is contrary to the law laid down by this Court in Sujith v. State of Kerala 2012(2) KLT547 Paragraph 13 of the said judgment is reads as follows: CrI.M.C.No. 2348 of 2014 2 " 13. Therefore, in exercise of jurisdiction under Art.226 of the Constitution of India, it is hereby ordered that the revenue and police authorities, while effecting seizure, shall ensure that any revenue official effecting the seizure, notifies such seizure, also to a police official, over and above the

requirement in S.22 of the Act and the Rules. That police official may effect seizure of those goods and report such seizure to the jurisdictional Magistrate in accordance with law and any police officer effecting seizure shall, apart from reporting any such seizure to the jurisdictional Magistrate, also place a report of such seizure before the concerned revenue authority so that action can follow through the criminal court and through the revenue authority in terms of the laws. Following the aforesaid, it is further ordered that in all pending cases, the competent police officer shall effect seizure and report the same to the jurisdictional Magistrate, if not already done and the competent revenue authority shall make appropriate complaint to the jurisdictional Magistrate at the earliest. This would also enable the owners of the goods or vehicles to apply for interim custody in terms of S.451 or 457 CrI.P.C., as the case may be. In ordering release, the Judicial Magistrate shall be guided by the terms CrI.M.C.No. 2348 of 2014 3 laid down by the Full Bench of this Court in Shan v. State of Kerala (2010(3) K.L.T413(F.B)). The appropriate authorities shall also file complaints for initiating prosecution in all cases, where offences under the Act are disclosed. These directions shall apply in dealing with sand and vehicles, seized by the police or revenue authority under the provisions of the Act or the Code of Criminal Procedure, over and above the directions in Moosakoya (supra) and Shoukathali (supra), until appropriate legislative provisions are brought in, which event, we hope, shall come at the earliest. " 3. I have heard the learned Public Prosecutor also.

4. Having regard to the law laid down by the Division Bench of this Court, apparently the 2nd respondent ought to have produced the vehicle before the learned Magistrate. This has not been done.

5. In such circumstances, even if the vehicle is produced before the SDM, going by the law laid down by this Court, the revenue officials has to produce the vehicle before the Magistrate for further proceedings. Under these CrI.M.C.No. 2348 of 2014 4 circumstances, there will be a direction to the respondents to take necessary proceedings to produce the vehicle belonging to the petitioner before the learned Magistrate within a period of one week from today and thereafter, it shall be open for the petitioner to file necessary application for release of the

vehicle and the learned Magistrate shall consider the matter afresh and pass appropriate orders. Sd/- A.M.SHAFIQUE (JUDGE) // True Copy // P.A. To Judge
DSV/25/04 Crl.M.C.No. 2348 of 2014 5

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