

Basheer Abdulla Vs. State of Kerala

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Court : Kerala

Decided On : Apr-29-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Basheer Abdulla

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 29^H DAY OF APRIL 2014 9TH VAISAKHA, 1936 WP(C).No. 10115 of 2014 (L) ----- PETITIONER : ----- BASHEER ABDULLA 4381, MAVATHODI HOUSE, VETTUKKATTIRI VALLATHOLE NAGAR, THRISSUR. BY ADV. SRI.K.PRAVEEN KUMAR RESPONDENT(S) : ----- 1. STATE OF KERALA REP. BY THE SECRETARY, REVENUE DEPARTMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DISTRICT COLLECTOR, MALAPPURAM -676 505.

3. THE SUB DIVISIONAL MAGISTRATE TIRUR, MALAPPURAM - 676 505.

4. THE SUB INSPECTOR OF POLICE, PERUMPADAPPU POLICE STATION, MALAPPURAM -676 505. R1 RO R4 BY GOVT. PLEADER SMT. K.A. SANJEETHA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/04-2014, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING: Mn ...2/- WP(C).No. 10115 of 2014 (L)

----- APPENDIX PETITIONERS' EXHIBITS :
----- EXHIBIT-P1- TRUE COPY OF THE REGISTRATION
CERTIFICATE OF THE VEHICLE BEARING REGN.NO. KL10S2832 EXHIBIT-
P2- TRUE COPY OF THE SEIZURE MAHAZAR. EXHIBIT-P3- TRUE COPY OF
THE PHOTOGRAPHS SHOWING THE VEHICLE OF THE PETITIONER.
EXHIBIT-P4- TRUE COPY OF THE

JUDGMENT

IN W.P(C)22306/2013 OF THIS HON'BLE COURT. EXHIBIT-P5- TRUE COPY OF
THE

ORDER

ISSUED BY THE 3D RESPONDENT DATED 15/03/2014. RESPONDENT(S)
EXHIBITS : NIL ----- //TRUE COPY// P.A.
TO JUDGE Mn ALEXANDER THOMAS, J.

----- W.P.(C.) No. 10115 of 2014 -----
Dated this the 29th day of April, 2014

JUDGMENT

The petitioner is aggrieved by the issuance of the impugned Ext.P5 proceedings dated 15.03.2014 to the extent it imposes conditions for interim release of the petitioner's vehicle seized in connection with the alleged violation of the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2002 and the rules framed thereunder.

2. The petitioner had earlier approached this Court by filing W.P.(C) No. 22306 of 2013, in which this Court as per Ext.P4 judgment dated 09.09.2013 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 Shan C.T. v. State of Kerala reported in 2010 (3) KLT413 In pursuance to the compliance of the directions W.P.(C) No. 10115/2014 -2- issued by this Court in Ext.P4 judgment, the Revenue Divisional Officer concerned has issued impugned Ext.P5 proceedings dated 15.03.2014 in

which it is ordered that 1/3rd of the assessed value of the vehicle shall be deposited by the petitioner and the bank guarantee for the balance amount of the assessed value shall be furnished.

3. The petitioner submits that he is unable to comply with the direction in Ext.P5 proceedings to deposit 1/3rd of the assessed value of the vehicle and that a direction may be issued for grant of interim custody of the vehicle to the petitioner without payment of any such amount.

4. 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 C.T. v. State of Kerala reported in 2010(3) KLT413 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 W.P.(C) No. 10115/2014 -3- 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." 5. In view of the categorical directions issued by the Full Bench 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 a further condition that the owner of the vehicle should provide W.P.(C) No. 10115/2014 -4- either a bank guarantee or immovable property security for the balance amount of the vehicle, the impugned direction issued by the RDO as per Ext.P5 cannot be faulted.

6. The learned counsel for the petitioner submits that a direction may be issued to the 3rd 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 09.09.2013 in W.P.(C) No.22306 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 Sujith v. State of Kerala reported in 2012 (2) KLT547 if the offence is made out.

7. It is brought to my notice by the learned Government Pleader that the competent authority to pass final orders on the W.P.(C) No. 10115/2014 -5- confiscation proceedings is the 3rd respondent Sub Divisional Magistrate, Tirur, Malappuram.

8. Accordingly, it is ordered that the 3rd respondent Sub Divisional Magistrate, Tirur 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. sd/-
ALEXANDER THOMAS, JUDGE. rv

