

Abdulla Shabeer Vs. the State of Kerala

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Court : Kerala

Decided On : Nov-05-2014

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appellant : Abdulla Shabeer

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE WEDNESDAY, THE 5TH DAY OF NOVEMBER 2014 14TH KARTHIKA, 1936 WP(C).No. 5109 of 2007 (G)

----- PETITIONER(S): ----- ABDULLA SHABEER K., S/O.MOOSAKUTTY, KORALIYADAN HOUSE, MYTHRA, AREA CODE, MALAPPURAM DISTRICT. BY ADV. SRI.BABU S. NAIR. RESPONDENT(S): ----- 1. THE STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT COLLECTOR, MALAPPURAM.

3. THE TAHSILDAR, NILAMBUR TALUK, MALAPPURAM DISTRICT. BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/11/2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: RVS. WP(C).No. 5109 of 2007 (G) APPENDIX PETITIONER(S)' EXHIBITS : ----- EXHIBIT P1: TRUE

COPY OF THE

ORDER

NO.P4.28011/06 ISSUED BY THE 2D RESPONDENT DATED, 19/10/2006.
EXHIBIT P2: TRUE COPY OF THE

JUDGMENT

IN W.A.NO.1330/2002 AND CONNECTED CASES DATED 17/06/2002 OF THIS
HON'BLE COURT. RESPONDENT(S)' EXHIBITS : ----- NIL. /TRUE
COPY/ P.A.TO JUDGE RVS. A.MUHAMED MUSTAQUE, J.

===== WP(C).No.5109 of 2007-G. =====
Dated this the 5th day of November, 2014.

JUDGMENT

The petitioner has approached this Court aggrieved by Ext.P1 order passed by the District Collector, Malappuram in proceedings under the Kerala Protection of River Banks and Regulation of Removal of Sand Act. By the impugned order the petitioner has been directed to pay a penalty of Rs.One lakh. According to the petitioner, there is no provision to impose a penalty of Rs.One lakh from the owner of the vehicle. The petitioner relies on unamended Section 23 of the River Sand Act. The above provision abundantly makes clear that there is no provision for imposing penalty of Rs.One lakh. The provision regarding confiscation only says that the vehicle can be confiscated. However the rules framed under the Act, particular rule 27(3), shows that the vehicle may be returned to the owner of the vehicle towards river management fund equal to the price fixed by WP(C).No.5109/2007-G. 2 the District Collector within seven days from the seizure. Therefore for the purpose of releasing the vehicle the petitioner can be directed to pay amount towards river management fund.

2. A Division Bench of this Court in Sanjayan v. Tahsildar (2004 KLT597 noted the Rule 27 and held that the revenue authorities have only power to compound the offence and not the power to impose penalty. In view of the facts as stated above that this offence has been committed before the amendment as there is no power

to the revenue authorities to impose penalty. I am of the view a different approach has to be taken in this matter. The value of the vehicle has not been fixed by the District Collector in the proceedings. This is a matter relating to a case initiated in the year 2006. The vehicle has been released to the petitioner. Now almost eight years are over. Therefore, considering the facts and circumstances of the case I am of the view, the petitioner can be directed to compound the WP(C).No.5109/2007-G. 3 offence on payment of Rs.50,000/- to river management fund. The petitioner shall remit the above amount within a period of six weeks. Based on the payment above, the security furnished by the petitioner for release of the vehicle shall be released to the petitioner. The writ petition is disposed of as above. A.MUHAMED MUSTAQUE, (Judge) Kvs/-

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