

Arun vs the Sub Inspector of Police

Arun vs the Sub Inspector of Police

SooperKanoon Citation : sooperkanoon.com/1334667

Court : Kerala

Decided On : Jan-30-2023

Judge : Honourable Mrs. Justice Anu Sivaraman

Appeal No. : WP(C)/2794/2023

Appellant : ARUN

Respondent : The Sub Inspector of Police

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN
MONDAY, THE 30TH DAY OF JANUARY 2023 / 10TH MAGHA, 1944
WP(C) NO. 2794 OF 2023 PETITIONERS: 1 ARUN AGED 30 YEARS
S/O. GOPALAKRISHNAN, KARIMPANKALAYI HOUSE,
KADAMPUZHA, P.O. MELMURI -, MALAPPURAM DISTRICT. , PIN -
676553 2 IBRAHIM AGED 32 YEARS S/O. ABDU, OLAPULAM HOUSE,
CHANGOTTOOR P.O., KOTTAKKAL , MALAPPURAM DISTRICT. , PIN
- 676503 BY ADV K.K.MOHAMED RAVUF RESPONDENT: THE SUB
INSPECTOR OF POLICE KADAMPUZHA POLICE STATION,
KADAMPUZHA, MALAPPURAM DISTRICT, , PIN - 676553 BY ADV
GOVERNMENT PLEADER BY SMT.PARVATHY K-GP THIS WRIT

PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 30th day of January, 2023 This writ petition is filed seeking the following relief:-

i. Issue a Writ of mandamus or any other appropriate writ, order or direction directing the respondent to release the vehicle bearing Reg.No.KL 58 C 5090 (Tipper Lorry) to the 1 st petitioner and Tipper Lorry bearing Reg.No.KL 55 AA 4298 to the 2 nd petitioner unconditionally forthwith: which wre seized vide Exhibits P3 and P4 Mahazars respectively.

2. Heard the learned counsel for the petitioners and the learned Government Pleader.

3. Learned counsel for the petitioners relies on

Exhibit P5 judgment and contends that since the empty vehicles of the petitioners were admittedly seized from the property and there is no allegation that the vehicles were used for illegal transportation of the minerals or there were any material to show that the vehicles were so used, the seizure was illegal. It is submitted that Exhibits P3 and P4 seizure mahazars would indicate that both the vehicles were seized at a time when they were totally empty and that the mahazars do not indicate that the lorries were loaded or being loaded with laterite stone for illegal transportation.

4. The learned Government Pleader submits

that Exhibit P5 judgment is not final and is being taken in appeal. It is further contended that there was large scale illegal excavation and transportation going on in the site in question and that the vehicles were seized from the site where

such illegal excavation was going on. It is therefore clear that the vehicles were intended for use for such illegal activities and that therefore the seizure was proper and valid.

5. Having considered the contentions advanced,

I notice that the rules provide for penalties for contravention of the provisions of the Act and Rules. Rule 14 of the Kerala Minor Mineral Concession Rules provides for obtaining transit pass for the transportation of ordinary earth. Rule 26 of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 provides for seizure of the minerals and the receptacles in which the same is found and the carrier used in carrying the same. In the instant case there is no allegation that there was any mineral found in the vehicles or that they were found to be carrying the same. As stated in Exhibit P5 judgment, the mere presence of the vehicles at the site of the illegal quarrying by itself would not constitute the offence or attract the penalty or confiscation. In the above view of the matter, I am of the opinion that the prayers, as sought for, are liable to be granted. The writ petition is therefore allowed. There will be a direction to the respondents to release the vehicles covered by Exhibits P3 and P4 seizure mahazars to the registered owners of the vehicles forthwith. Sd/- ANU SIVARAMAN JUDGE SSK/30/01 ANNEXURE PETITIONER EXHIBITS Exhibit P1 . TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE KL-58C/5090 Exhibit P2 . TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE KL-55 AA 4298 Exhibit P3 TRUE COPY OF THE SEIZURE MAHAZAR DATED 22.1.2023 ISSUED BY THE RESPONDENT IN RESPECT OF VEHICLE BEARING REG. NO. KL 58 C Exhibit P4 . TRUE COPY OF THE SEIZURE MAHAZAR DATED 22.1.2023 IN RESPECT OF VEHICLE BEARING REG. NO. KL 55 A 4298 Exhibit P5 ." TRUE COPY OF THE JUDGMENT DATED 26.12.2022 IN WP(C) NO. 40240/2022 OF THIS HON'BLE COURT RESPONDENTS' EXHIBITS:nil TRUE COPY P.A.TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com