

Prasad vs State of Kerala

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Court : Kerala

Decided On : Feb-25-2022

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.MC/30/2022

Appellant : Prasad

Respondent : State of Kerala

Judgement :

Crl.M.C.No.30/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944
CRL.MC NO.30 OF 2023 PETITIONER: ASHRAF T.T,
S/O.ABOOBACKER, THATTETHAZHATH HOUSE, NJAGATTIRI PO,
TRITHALA, PALAKKAD DISTRICT, PIN - 676 517. BY
ADV.P.T.SHEEJISH RESPONDENTS: 1 STATE OF KERALA,
REPRESENTED PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682 031. 2 THE STATION HOUSE OFFICER, KUTTIPURAM
POLICE STATION, KUTTIPURAM, MALAPPURAM DISTRICT, PIN -
679 571. 3 THE GEOLOGIST, MALAPPURAM, DEPARTMENT OF

MINING & GEOLOGY, TIRUR, MALAPPURAM, MALAPPURAM DISTRICT, PIN - 676 101. SRI.VIPIN NARAYAN -PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C.No.30/23 2

ORDER

The petitioner is the owner of a mini tipper lorry bearing Registration No.KL-52-S-5468. The said vehicle was seized by the 2nd respondent on 31.12.2022 on the allegation that the said vehicle was used for transporting of red earth in violation of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. The grievance of the petitioner is that, even though the said vehicle was seized on 31.12.2022, the factum of the seizure is not reported to the jurisdictional Magistrate as contemplated under Section 102 (3) of Cr.P.C.

2. This CrI.M.C. is filed in such circumstances, seeking a direction to the 2nd respondent to report the seizure of the said vehicle to the jurisdictional Magistrate.

3. Heard Sri.P.T.Sheejish, learned counsel for the petitioner and Sri.Vipin Narayan, learned Public Prosecutor for the State.

4. The learned counsel for the petitioner brought the

attention of this Court to Annexure-A3 order passed by this Court in CrI.M.C.No.945 of 2017, in which a case of similar nature was considered and a direction was issued to the Police to report the matter to the jurisdictional Magistrate within a stipulated time.

CrI.M.C.No.30/23 3 After going through the entire materials, I am of the view that the power of the 2nd respondent to seize the vehicle is governed under Section 102 Cr.P.C and therefore, he has an obligation to report the matter to the jurisdictional Magistrate immediately after effecting such seizure. If no such reporting is made, it amounts to violation of the statutory provisions.

5. In such circumstances, this CrI.M.C. is disposed of

directing the 2nd respondent to report the matter to the jurisdictional Magistrate forthwith and thereupon it shall be open for the petitioner to approach the said jurisdictional court seeking custody of the said vehicle by filing appropriate application in this regard. It is further directed that, the 2 nd respondent shall inform the matter to the 3rd respondent as well.

6. With the above observations, this Crl.M.C. is disposed of.

Upon reporting of the seizure of the vehicle and submission of application for release of the said vehicle, the learned Magistrate shall consider the same as expeditiously as possible.

Sd/- ZIYAD RAHMAN A.A. JUDGE DG/4.1.23 Crl.M.C.No.30/23 4 APPENDIX OF CRL.MC 30/2023 PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER LORRY BEARING REGISTRATION NO.KL-52-S-5468 Annexure A2 TRUE PHOTOCOPY OF THE MAHAZAR DATED 31.12.2022 PREPARED BY THE 2ND RESPONDENT Annexure A3 TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CRL.M.C.NO. 945/2017 DATED 08.02.2017

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