

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 7TH DAY OF NOVEMBER 2016/16TH KARTHIKA, 1938

Cr1.MC.No. 6992 of 2016 ()

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CRIME NO. 630/2016 OF KUMBLA POLICE STATION , KASARGOD

PETITIONER/ACCUSED:

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SREENIVASAN C.,  
S/O SREEDHARAN, VALIYAVEETIL HOUSE, KAVUPARA,  
BHEMANADI, KASARAGOD DISTRICT.

BY ADVS.SRI.JACOB E SIMON  
SRI.R.UDAYA KUMAR

RESPONDENT/STATE/DEFACTO COMPLAINANT:

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THE STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR  
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. T.R RENJITH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
07-11-2016, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES

ANNEXURE A A CERTIFIED COPY OF THE FIR IN CRIME NO.630/2016 OF KUMBALA POLICE STATION

ANNEXURE B A TRUE COPY OF THE BILL ISSUED BY THE M/S SARALA TRADING DATED 05.10.2016

ANNEXURE C A TRUE COPY OF THE SAID DELIVARY NOTE ISSUED ON 07.10.2016

ANNEXURE D A TRUE COPY OF THE GOVERNMENT ORDER DATED 14.12.2009

ANNEXURE E A TRUE COPY OF THE CIRCULAR DATED 11.11.2010

ANNEXURE F A TRUE COPY OF THE JUDGMENT IN WP(C)24877/2016 DATED 03.08.2016

ANNEXURE G A TRUE COPY OF THE ADVANCE TAX UTILIZATION RECEIPT DATED 07.10.2016

ANNEXURE H A TRUE COPY OF THE CERTIFICATE ISSUED BY THE COMMERCIAL TAX OFFICER MANJESWAR REGARDING THE VEHICLE TRANSPORTATION

ANNEXURE I A TRUE COPY OF THE JUDGMENT IN CRL.M.C.5246/2016.

RESPONDENT'S ANNEXURES: NIL

TRUE COPY

P.A. TO JUDGE.

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**RAJA VIJAYARAGHAVAN.V., J**

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Crl.M.C. No. 6992 of 2016  
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Dated 7<sup>th</sup> November, 2016  
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**ORDER**

- 1.This petition is filed under Section 482 of the Code of Criminal Procedure.
- 2.The petitioner is the accused in Crime No.609 of 2016 of Kumbala Police Station registered for offences punishable under Section 379 of the IPC and under Section 20 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter referred to as "Act 18 of 2001").
- 3.The prosecution allegation is that, on 8.10.2016 the SuB Inspector of Police, Kumbala Police Station intercepted the Lorry bearing Reg.No.KA-32-8149 driven by the petitioner and on inspection, the vehicle was found loaded with sand. Under the strong premise that what was being

transported was river sand, illegally removed from some river in the State of Kerala, violating the provisions of Act 18 of 2001, the vehicle as well the sand was seized and Annexure-A FIR was registered as aforesaid.

4.This petition is filed seeking to quash the proceedings on the ground that the continuance of proceedings is nothing but an abuse of process.

5.I have heard the submissions of the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

6.The learned counsel appearing for the petitioner submits that due to the scarcity of construction grade sand in the State of Kerala, the Government has taken a policy decision to encourage the import of sand from other States as well as from other Countries. This was done in public interest considering the huge requirement of sand

in the State of Kerala. It was in accordance with the orders issued by the Government that the petitioner had imported sand from the State of Orissa. Reference is made to Annexure-B bill, Annexure-C Delivery Note, Annexure-G Advance Tax Utilisation Receipt and Annexure- H certificate issued by the Commercial Tax Officer to contend that what was seized from the vehicle of the petitioner was not river sand removed from the rivers flowing in the State of Kerala but sand imported from the State of Orissa. In view of the above, the initiation of prosecution is nothing but an abuse of process of court, is the submission.

7.The learned counsel would then rely on the judgment in **Prakash Nayak v. District Collector, Kasaragod and Others** [2016(40 KHC 915] to contend that a Full Bench of this Court has conclusively held that sand or even river sand brought to the State of Kerala from other States, on

licit or illicit export, cannot be governed by the Sand Act in Kerala. According to the learned counsel, in view of the said decision, the Crime registered under Section 379 of the IPC and under the various provisions of the Act 18 of 2001 can only be quashed.

8.Per contra, the learned Public Prosecutor relying on the case of **Prakash Nayak** (supra) would contend that even if provisions under Act 18 of 2001 is not attracted, prosecution is perfectly possible under the MMDR Act and the rules framed thereunder. It is submitted by the learned Public Prosecutor that the petitioner has not produced any mineral transit pass issued by the competent authority in the State of Orissa which in other words would reveal that the sand was not licit. It is submitted that the Full Bench has held that the prosecution procedure including seizure and arrest as provided under the MMDR Act, 1957 will have to be

followed in such circumstances. However, the learned Public Prosecutor would fairly submit that the Commercial Tax Officer (Admn) after verification of the Kerala Value Added Tax Information System (KVATIS) and vehicle checking register maintained in the commercial tax check post, Bangara has intimated that the vehicle bearing Reg.No.KA-32-8149 had crossed the check post prior to the seizure. The learned Public Prosecutor has submitted that steps have been taken for altering the Section by including the penal provisions of the MMDR Act, 1957.

9.I have considered the rival submissions and have gone through the materials on record.

10.Since the documents produced by the petitioner and also the information received from the commercial tax authorities reveals that the sand found in the vehicle was imported from the State of Orissa, the prosecution of the petitioner under Section 379 of the IPC and under Section

20 of Act 18 of 2001 cannot be sustained.

11.However, the petitioner has not produced any mineral transit pass issued by the competent authority in the State from where the sand was exported on payment of royalty and other charges. In view of the above, and as held by the Full Bench in **Prakash Nayak** (supra), there is no embargo in dealing with the case under the MMDR Act, 1957 and proceedings including seizure, confiscation and prosecution can be initiated under the provisions of the said Act. Hence, though the prosecution of the petitioner under Section 379 of the IPC and under Section 20 of Act 18 of 2001 cannot be sustained in the eye of law, Annexure-A FIR cannot be quashed as such. The petitioner is liable to be proceeded under Section 21 of the MMDR Act, 1957 as has been held in **Prakash Nayak** (supra).



12. In the result, this petition is disposed of as follows:

(i) Prosecution of the petitioner under Section 379 of the IPC and under Section 20 of the Kerala Protection of River Sand and Regulation of Removal of Sand Act, 2001 cannot be sustained and the same is quashed.

(b) However, the petitioner is liable to be proceeded against under the relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

(c) If the police officer who has seized the vehicle has not so far reported the fact of seizure, he shall immediately report the fact of seizure to the court having jurisdiction. The court having jurisdiction shall be empowered to pass appropriate orders as regards the sand and the vehicle involved in the cases. If application for interim custody is filed, the same shall also be dealt with by the learned Magistrate expeditiously.

(d) **Alternatively**, since the prosecution is being carried on under the MMDR Act, 1957, the offence punishable under the said Act is compoundable either before or after the institution of the prosecution under Section 23A of the MMDR Act, 1957.

(e) If the petitioner is prepared to compound the offence, the officer who

seized the vehicle is directed to produce the vehicle bearing Registration No.KA-32-8149 before the District Geologist, Kasaragode within a period of three days from the date of receipt of a copy of this order.

(f)The District Geologist, Kasaragod shall permit the petitioner to compound the offence under Section 23A of the MMDR Act on payment to that person, for credit to the Government, such sum as the said authority may specify.

(g)The above endeavour shall be completed within a period of 5 days from the date of filing of application seeking composition before the District Geologist, Kasaragod. The petitioner shall pay the amount directly before the District Geologist concerned and certificate to that effect shall be produced before the officer who seized the vehicle who shall release the vehicle as well as the sand.

Petition is disposed of.

Sd/-  
**RAJA VIJAYARAGHAVAN.V.,**  
**JUDGE**

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