



2024/KER/46699

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 19TH DAY OF JUNE 2024 / 29TH JYAISHTA, 1946

CRL.MC NO. 3921 OF 2024

CRIME NO.1351/2023 OF TIRUR POLICE STATION, MALAPPURAM

IN CC NO.3318 OF 2023 OF JUDICIAL MAGISTRATE OF FIRST
CLASS ,TIRUR

PETITIONERS/ACCUSED NOS. 2 AND 6:

1 ARSHAD
AGED 30 YEARS
SON OF MOIDU,
KUNDANIYIL HOUSE, MOOCHIKKAL,
THIRUNAVAYA, VALANCHERY P.O.,
MALAPPURAM DISRTRICT, PIN - 676552

2 SHIHABUDHEEN
AGED 36 YEARS
SON OF ABDURAHIMAN,
PATHIKKAL HOUSE, MUTTIKKAD,
ANTHAVOOR P.O., TIRUR TALUK,
MALAPPURAM DISTRICT, PIN - 676301

BY ADVS.
P.M.ZIRAJ
IRFAN ZIRAJ

RESPONDENT/COMPLAINANT:

1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA,
ERNAKULAM,, PIN - 682031



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**2 INSPECTOR OF POLICE
TIRUR POLICE STATION,
MALAPPURAM DISTRICT, PIN - 676101**

**BY ADV.ASHI M.C
PUBLIC PROSECUTOR**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
19.06.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**'CR'****BECHU KURIAN THOMAS, J.****-----
Crl.M.C.No.3921 of 2024
-----***Dated this the 19th day of June, 2024***ORDER**

Would the penal provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, apply to river sand found on a stationary vehicle? Petitioners have raised the aforesaid question for consideration in this petition filed under section 482 Cr.P.C.

2. Petitioners are the second and sixth accused in C.C.No.3318/2023 on the files of the Judicial First Class Magistrate Court, Tirur. Prosecution alleges that the accused had, on 12.10.2023, removed and transported river sand without any document or permit on a vehicle bearing registration No.KL-08-AE-8245, which had not even paid the periodical tax and was operating without any valid insurance. The vehicle was found parked in the compound house of the third accused, situated next to the Thirunavaya pump house, adjacent to a Kadavu and thereby committed the offences under Section 379 read with Section 34 of the Indian Penal Code, 1860, apart from Sections 20 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short 'the



Sand Act'), Sections 192A(1) and 196 of the Motor Vehicles Act, 1988, and Section 15 of the Motor Vehicles Taxation Act.

3. Sri. P.M.Ziraj and Adv. Irfan Ziraj, the learned counsel for the petitioners, contended that the prosecution allegations against the petitioners are baseless and are not sustainable in law. It was pointed out that the vehicle was allegedly seized while it was parked in the house of the third accused, and hence, the offences under the Sand Act will not be attracted. The learned counsel also contended that in order to attract the offence under Sections 20 and 23 of the Sand Act, the river sand must have been either extracted from the 'Kadavu' or must have been transported, and a stationary vehicle will not come within the purview of the term 'transport of sand'. The learned counsel further submitted that the vehicle having been parked inside the private property of the third accused, none of the offences alleged are attracted.

4. Sri. Ashi M.C, the learned Public Prosecutor, on the other hand, contended that the first petitioner has indulged in repeated commission of similar offences under the Sand Act and already 12 cases have been registered against him for identical offences. It was further submitted that the term 'transport' includes even a vehicle loaded with river sand, and any interpretation that defeats the purpose of the statute ought not to be accepted. The learned Public Prosecutor further submitted that the house of the third accused is situated next to a 'kadavu' and therefore, the



contention raised on the basis of the vehicle seized from a private property has no significance.

5. I have considered the rival contentions.

6. Petitioners and the other accused are alleged to have transported river sand without any permit or pass, as required under law. The Sand Act mandates that the river sand shall be removed only after obtaining permission from the Competent Authority. Admittedly, the petitioners did not possess any such permission. Therefore, the river sand found in the lorry belonging to the second accused was not legally authorised.

7. Section 23 of the Sand Act states that whoever transports sand, without complying with the provisions of the Act shall be punished, and the vehicle used for the transportation be liable to be seized by the Police or Revenue Officials. The word transport cannot be interpreted to mean that the vehicle must be in motion. If such an interpretation is adopted, the whole purpose of the statute would be defeated.

8. Blacks Law Dictionary Eight Edition defines the word “transport” as “to carry or convey from one place to another”. The Oxford Advanced Learners Dictionary Ninth Edition also defines the word ‘transport’ to mean ‘carry’. The words ‘transports sand’ would take in the removal of sand from the river bed or kadavu to the lorry and from the lorry to any other place. Even when a vehicle is loaded with river sand, it will amount to transport of sand, irrespective of whether the vehicle has set in motion or



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not. The contention of the learned counsel for the petitioners that the vehicle in a stationary mode will not fall within the purview of the Sand Act is too far-fetched and is not legally tenable.

9. Taking into consideration the alleged repeated commission of similar offences by the first petitioner in similar offences, interference under Section 482 of Cr.P.C is not called for.

Accordingly, this criminal miscellaneous case is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

Jka/19.06.24.

**APPENDIX OF CRL.MC 3921/2024****PETITIONERS' ANNEXURES**

Annexure 1	CERTIFIED COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.1351/2023 OF TIRUR POLICE STATION
Annexure 2	TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT DATED 19.10.2023 IN B.A.NO.9335 OF 2023
Annexure 3	CERTIFIED COPY OF THE FINAL REPORT WITHOUT DATE SUBMITTED BY THE SECOND RESPONDENT IN CRIME NO.1351/2023 OF TIRUR POLICE STATION BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, TIRUR
Annexure 4	TRUE COPY OF THE SEIZURE MAHASAR DATED 12.10.2023 IN CONNECTION WITH CRIME NO.1351/2023 OF TIRUR POLICE STATION
Annexure 5	TRUE COPY OF THE SCENE MAHASAR DATED 12.10.2023 PRODUCED BY THE SECOND RESPONDENT IN CONNECTION WITH CRIME NO.1351/2023 OF TIRUR POLICE STATION
Annexure 6	TRUE COPY OF THE WITNESS LIST IN CONNECTION WITH CRIME NO.1351/2023 OF TIRUR POLICE STATION
Annexure 7	TRUE COPY OF THE STATEMENT OF CW1 MR.SURESH BABU DATED 12.10.2023
Annexure 8	TRUE COPY OF THE STATEMENT OF CW2 MR.VIVEK DATED 12.10.2023
Annexure 9	TRUE COPY OF THE STATEMENT OF CW3 MR.SATHEESH DATED 12.10.2023
Annexure 10	TRUE COPY OF THE STATEMENT OF CW4 MR.ANEESH DATED 12.10.2023
Annexure 11	TRUE COPY OF THE STATEMENT OF CW5 MR.RAJESH DATED 12.10.2023