

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

Crl.MC.No. 2481 of 2015

**ST 5935/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PUNALUR
CRIME NO. 759/2014 OF KUNNICODE POLICE STATION , KOLLAM**

PETITIONER(S)/ACCUSED:

**RAJESH,
S/O.RAJAN, RAJANI BHAVAN, NEDUVANNOOR,
THALAVOOR, KOLLAM.**

BY ADV. SRI.SYAM J SAM

RESPONDENT(S)/STATE AND DEFACTO COMPLAINANT:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31.**

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23-06-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' ANNEXURES

ANNEXURE-A1. THE TRUE COPY OF THE JUDGMENT IN WPC NO.15890/2014 OF THIS HONOURABLE COURT.

ANNEXURE-2. THE TRUE COPY OF THE RECEIPT ISSUED SHOWING COMPLIANCE OF JUDGMENT IN WPC NO.15890/2014 OF THIS HONOURABLE COURT.

ANNEXURE-A3. THE NOTICE ISSUED TO THE PETITIONER IN ST 5935/2014 BY THE JFCM-III, PUNALUR.

RESPONDENT(S)' ANNEXURES

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

ALEXANDER THOMAS, J.

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Crl.M.C.No. 2481 of 2015

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Dated this the 23rd day of June, 2015

O R D E R

The prayer in this Crl.M.C. is as follows:

“..... to quash Annexure A-3 issued against the petitioner in ST 5934 OF 2014 pending before the J.F.C.M-III, Punalur in the interest of justice.”

2. It is stated that the petitioner is the accused impugned in Crime No.759/2014 of Kunnikode Police Station alleging offence under Sec.4 read with Sec.21 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). The said crime has been registered by the Police against the petitioner for the said offence alleging that the petitioner had illegally transported soil in tipper lorry bearing registration No.KL 47-7796, which was owned by one Sri.Biju Kumar and that the petitioner herein was the driver of that vehicle. The Police had seized the vehicle in pursuance of the registration of the impugned crime. That at that point of time the owner of the vehicle, Sri.Biju Kumar had approached this Court by filing a Writ Petition [W.P.(C).No.15890/2014] in order to compound the above said offence and to get the vehicle released. This Court permitted the petitioner in W.P.(C).No.15890/2014

(Sri.Biju Kumar) to compound the offence by depositing an amount of Rs. 25,000/- as compounding fee with the requisite application before the respondent and that on receipt of such fee, the vehicle shall be released forthwith. That Anx.A-1 is the judgment dated 24.6.2014 rendered by this Court in W.P.(C).No.15890/2014 filed by the said Sri.Biju Kumar, pertaining to compounding of the offence involving the said vehicle bearing registration No.KL 47-7796. That the said Writ Petitioner in Anx.A1 judgment had paid the compounding fee of Rs.25,000/- as evident from Anx.A-2 receipt dated 28.6.2014. That in spite of this, the Police have laid the final report/charge sheet and that the learned Magistrate had issued Anx.A-3 summons. It is on this basis that it is prayed that all further proceedings pursuant to Anx.A-3 summons may be quashed.

3. Heard Sri.Syam.J.Sam, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent State of Kerala.

4. The petitioner has furnished the details of the crime as Crime No.759/2014 of Kunnikkode Police Station, registered for offences under Secs. 48 and 21 of the MMDR Act, but the copy of the FIR in that crime is not produced. It is not discernible from a

mere reading of Anx. A-1 judgment that the compounding directed to be considered by this Court in that judgment, though involves the very same vehicle bearing registration No.KL 47-7796, as to whether it pertains to the very same crime as the one in the instant case. Therefore, this Court had called for and perused the original of the case records in W.P.(C).No.15890/2014 (which led to Anx.A-1 judgment) and it could be verified therefrom that Ext.P-1 therein is the registration certificate of the vehicle bearing No.KL-47-7796, the registered owner of which is one Biju Kumar (petitioner in W.P. (C).No.15890/2014). Ext.P-2 in that W.P.(C) is the copy of the FIR in Crime No.759/2014 of Kunnikkode Police Station, registered for the above offences, wherein it is clear that the petitioner, Sri.Rajesh, is the accused. Therefore, it could be verified by this Court that the compounding directed to be considered by this Court in Anx.A-1 judgment pertains to the very same crime as in the instant case. So it is established that the compounding of the offences involved in Crime No.759/2014 of Kunnikkode Police Station has already been effected pursuant to the directions of this Court in Anx.A-1 judgment, as per Anx.A-2 receipt for Rs.25,000/- dated 28.6.2014 produced in this case, which is issued in favour of Sri.Biju Kumar,

the registered owner of the vehicle. Hence the prayer of the petitioner could be considered in the light of the compounding directed to be considered in Anx.A-1 judgment and one effected as per Anx.A-2.

5. It is not denied by the respondent that the offence in question has been compounded pursuant to directions of this Court in Anx.A-1 judgment dated 24.6.2014 in W.P.(C).No.15089/2014, as evident from the payment of the compounding fee as per Anx. A-2 dated 28.6.2014.

6. In view of the compounding of offence, all further proceedings pursuant to the impugned crime are ultra vires and unsustainable and are liable to be quashed. Moreover, Sec.22 of the MMDR Act stipulates that the cognizance of the offences under MMDR Act can be taken only on the basis of the complaint by an officer, who is authorised in that behalf as per the provisions of the MMDR Act. Thus, the impugned criminal proceedings, based on the final report/charge sheet/Police report submitted by the Police authorities are untenable. Therefore, the entire criminal proceedings that arise from the impugned Crime No.759/2014 of Kunnikode Police Station alleging offences under Secs.4 and 21 of the MMDR

Act and all further proceedings arising therefrom including Anx.A-3 are declared as ultra vires and unenforceable and will stand terminated.

With these observations and directions, the CrI.M.C. stands finally disposed of.

sd/-
ALEXANDER THOMAS, JUDGE
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///True copy///

P.S. to Judge