

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

Crl.MC.No. 5550 of 2015 ()

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CRIME NO. 407/2015 OF HEMAMBIKA NAGAR POLICE STATION,
PALAKKAD DISTRICT.**

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PETITIONER(S):

**YOUSUF, AGED 48 YEARS,
S/O. KUNJIMUHAMMED, MAHALIVEEDU,
PUTHUPERIYARAM VILLAGE, MUTTIKULANGARA P.O.,
PALAKKAD TALUK, PALAKKAD DISTRICT,
(OWNER OF TRACTOR BEARING REGISTRATION NO. KL-10-E-5569).**

BY ADV. SRI.JITHIN VARGHESE.

RESPONDENT(S):

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM,
THROUGH THE SUB INSPECTOR OF POLICE,
HEMAMBIKA NAGAR POLICE STATION,
PALAKKAD DISTRICT, PIN-688 541.**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN.

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19-08-2015, ALONG WITH CRL.MC. NO.5551 OF 2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

**ANNEXURE 1: TRUE COPY OF FIRST INFORMATION REPORT
DATED 12/06/2015 IN CRIME NO. 407/2015 OF HEMAMBIKA
NAGAR POLICE STATION.**

**ANNEXURE 2: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE
COURT DATED 08/04/2014 IN WP(C).NO.10538/2014.**

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

ALEXANDER THOMAS, J.

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Crl.M.C.Nos.5550 and 5551 of 2015

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Dated this the 19th day of August, 2015

J U D G M E N T

Heard Sri.Jithin Varghese, learned counsel appearing for the petitioners and the learned Government Pleader appearing for the respondents.

2. The prayers in all these Crl.M.Cs. are broadly similar in nature and relate to consideration of the request for compounding of the offences arising out of the alleged violation of the provisions of the Mines and Minerals (Development and Regulation) Act [MMDR Act] and the Kerala Minor Mineral Concession Rules [KMMC Rules] framed thereunder. The case of the petitioners is that they have not used the vehicles in contravention of the relevant provisions of the above said Act and the above said Rules in question and that the action of the respondent authorities in seizing their vehicles for alleged violation of the provisions of the above said Act and Rules is unlawful and ultra vires. However, they would submit that they are prepared to compound the offences in

question in view of the specific provisions made available in Section 23A of the MMDR Act and Rule 60A of the KMMC Rules, which expressly enable the accused parties to have the offences compounded. The question whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act and KMMC Rules has been considered in detail by this Court in the case between Digil v. Sub Inspector of Police reported in 2013 (1) KLT 600, wherein it has been held that once the offence is compounded, then there cannot be further prosecution proceedings. The directions given by this Court in Digil's case are as follows:

- “i) In cases where compounding applications have been acted upon as per the interim orders passed by this Court and the offences have been compounded and compounding fees have been collected and vehicles have been released, it is declared that no further proceedings can be taken for confiscation of the vehicles;
- ii) In cases where complaints have been filed before the Court but compounding applications have been entertained and offences have been compounded, appropriate applications will be filed before the Courts and the concerned Courts will pass appropriate orders in the matter with regard to the closure of the cases pending;
- iii) In cases where compounding applications are yet to be filed by the parties concerned, it is open to them to file applications which will be dealt with by the officer concerned in accordance with law and they will be free to pass appropriate orders on it. If no applications are filed within a period of three weeks from today and if compounding is not being allowed, it is open to the concerned officers to complete the procedures as enjoined by law.”

3. As to the question regarding the extent of the amount to

be satisfied as compounding fee, the Rules expressly stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stipulated as Rs.5,000/-. But in respect of transportation of sand/earth without any valid pass/sanction, the same is stipulated as an offence under the above said Act itself by virtue of Sec.4(1A) of the above said Act, for which separate penalty is provided under the said Act itself and the maximum fine in respect of such offence prescribed under the Act is stipulated as Rs. 25,000/-. This Court in the judgment dated 20.3.2014 in W.P.(C).No.8006/2014, as per the judgment dated 3.4.2014 in W.P.(C).No. 9086/2014, as per the judgment dated 27.3.2014 in W.P.(C).No. 8924/2014 and in many other cases, has passed directions for compounding of the offences in view of the above said directions in Digil's case reported in 2013 (1) KLT 600. The judgment dated 3.4.2014 of this Court in W.P.(C).

No. 9806/2014 reads as follows:

“The petitioner is eager and willing to have the offence registered under the Mines and Minerals (Regulation of Development) Act, 1957 for compounding. The application for compounding the offence shall be filed before the competent authority – first respondent. The offence shall also be permitted to be compounded on payment of the compounding fee of Rs. 25,000/- (Rupees Twenty five thousand only) in respect of the vehicle. Needless to say that no prosecution shall be initiated when the offence in respect of the incident has been compounded. The vehicle shall also be released to

the petitioner after the payment of the compounding fee.”

4. In the light of the consistent directions issued by this Court in various judgments in similar situations, it is ordered that in case the offences alleged against the petitioners herein are solely arising out of the alleged violation of the provisions of the MMDR Act and the KMMC Rules, then the applications of the petitioners, if already submitted for compounding the offences should be immediately taken up for consideration by the respondent authority concerned in each of these cases and if the authority decides to compound the offences, then on the petitioners paying the requisite fee, the offences shall be compounded forthwith and the custody of the vehicle concerned shall be given to the petitioner concerned forthwith. In such situation, it is further ordered that once the offence is compounded, then no prosecution proceedings shall be pursued against the petitioner concerned. In case any of the petitioners have not yet filed formal applications for compounding, then they may do so and submit such application before the competent authority concerned along with a certified copy of this judgment, in which case, the aforesaid directions for compounding of offence shall be extended to them also and must be complied

with forthwith by the respondent authority concerned. It is made clear that these directions issued for compliance are only in cases where the offences alleged against the petitioners are solely arising out of the alleged violation of the MMDR Act and KMMC Rules.

With the aforesaid observations and directions, these Criminal Miscellaneous Cases stand finally disposed of.

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Sd/-
ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge

Cr1.M.C.5550/15 & c.c

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P.S. to Judge