

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

CrI.MC.No. 5554 of 2015 ()

**CRIME NO. 768/2014 OF SREEKRISHNAPURAM POLICE STATION,
PALAKKAD DISTRICT**

PETITIONER(S):

- 1. ABDUL SALEEM,
S/O KUNJUMHAMMED, AGED 34 YEARS,
NALAKATH HOUSE, KODAKKADU P.O.,
KOTTAPADA II VILLAGE, MANNARKKAD TALUK,
PALAKKAD DISTRICT (OWNER OF THE LORRY
BEARING REGISTRATION NO. KL-13-L-1332)**
- 2. JAFER,S/O MUHAMMED, AGED 26 YEARS,
VALAYANGATTIL HOUSE, ATTASSERY P.O.,
KARIMPUZHA -I VILLAGE, OTTAPPALAM TALUK,
PALAKKAD DISTRICT (OWNER OF THE LORRY BEARING
REIGISTRATION NO. KL-5-U-6027).**
- 3. ABDUL SHAMEER,S/O MUHAMMED, AGED 26 YEARS,
CHANDANKUZHIYIL, ATTASSERY P.O.,
KARIMPUZHA -I VILLAGE, OTTAPPALAM TALUK,
PALAKKAD DISTRICT (OWNER OF THE LORRY BEARING
REIGISTRATION NO. KL-17-E-1833)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S)/COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM.**
- 2. THE SUB INSPECTOR OF POLICE,
SREEKRISHNAPURAM POLICE STATION,
PALAKKAD DISTRICT, PIN-679 513**

BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX 1: TRUE COPY OF THE SEIZURE MAHASSAR DT. SREEKRISHNAPURAM
PREPARED BY THE SECOND RESPONDENT
- ANNEX 2: TRUE COPY OF THE FIRST INFORMATION REPORT AS NO. 768 DT.
14/11/14 IF SREEKRISHNAPURAM POLICE STATION
- ANNEX 3: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT.
22/11/14 IN WPC NO. 31232/14
- ANNEX 4: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DT.
22/11/14 IN WPC NO. 31241/14
- ANNEX 5: TRUE COPY OF THE ORDER OF DISTRICT COLLECTOR, PALAKKAD
DT. 20/5/2015

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

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ALEXANDER THOMAS, J.

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Crl.M.C.No. 5554 of 2015

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Dated this the 19th day of August, 2015

J U D G M E N T

The three petitioners herein are the owners of the lorries, which were seized by the 2nd respondent Sub Inspector of Police, Sreekrishnapuram Police Station, Palakkad district, on the allegation that the said vehicles were unlawfully transporting river sand. According to the petitioners, the said allegations are false and baseless and that the vehicles of the petitioners were not actually transporting river sand, but ordinary sand. That on the basis of the request of the petitioners and on the basis of the judgment of this Court at Anx.3 dated 22.11.2014 in W.P.(C).No.31232/2014 and Anx.4 judgment dated 22.11.2014 in W.P.(C).No.31241/2014, samples of the same were taken from the said vehicles and sent for analysis and that after analysis, it has been found that the article seized from the lorries was not river sand, but only ordinary sand. That accordingly, the Revenue Divisional Officer, Ottapalam, and the District Collector, Palakkad had conducted adjudication in the

matter and found that the petitioners have not committed any offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, but that they have committed only offences under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 [MMDR Act] and the Kerala Minor Mineral Concession Rules, 1957, [KMMC Rules] framed thereunder. That accordingly, the petitioners sought permission to compound the offence against them as provided under the Kerala Minor Mineral Concessions Rules, and accordingly, sanction was granted and thereby the offence was compounded on deposit of Rs. 25,000/- as compounding fee and the petitioners paid Rs.25,000/- each as compounding fee. That on receipt of the compounding fee, the District Collector, Palakkad, directed release of the vehicles after unloading the sand in the Nirmithi Kendra on the basis of Anx.5 proceedings dated 20.5.2015. After compounding the offence, no prosecution could be continued against the petitioners or the vehicles and the investigation officer has to report before the learned Magistrate regarding the compounding of the offence and that on that basis, the jurisdictional Magistrate should have closed all the proceedings against the petitioners and the vehicles. That in

this case, till today, the investigating officer has not submitted any report before the court below and the proceedings are thus still unlawfully continued against that petitioners. That this is against the provision of law as well as the legal position settled by this Court in several cases, as in Digil v. Sub Inspector of Police reported in 2013 (1) KLT 600. It is in the light of these aspects, that the petitioners have filed the instant Criminal Miscellaneous Case with the prayer to quash the impugned Anx.2 final report/charge sheet and to quash the same.

2. Heard Sri.P.M.Ziraj, learned counsel for the petitioners and the learned Public Prosecutor appearing for the respondent State of Kerala.

3. It is common ground that as per Anxs.3 and 4 judgments, this Court had directed the authorities concerned to ensure that the samples of the articles seized from the lorries in question be sent for analysis to find out whether the seized articles are in fact river sand or not. This is also evident from Anx.5 proceedings dated 20.5.2015 issued by the District Collector, Palakkad. The matter was enquired through the Mining and Geology Department and that it was reported that the vehicles bearing Reg.

Nos.KL-13L-1332, KI-5U-6027, KI-17E-1833 actually contain ordinary sand and not river sand. That accordingly, the Revenue Divisional Officer, Ottapalam has submitted reported dated 13.4.2015 requesting that further steps be taken under the provisions of the MMDR Act and KMMC Rules by the District Collector, Palakkad. It is clear from page 2 of Anx.5 proceedings dated 20.5.2015 issued by the District Collector, Palakkad, that the offences under the MMDR Act and KMMC Rules have been compounded by payment of Rs.25,000/- for each vehicle, thus totalling to Rs. 75,000/- and the said compounding fee has been imposed as per the provisions in Secs.23A and 21(1) of the MMDR Act. It is also clear from the penultimate paragraph of Anx.5 that the owners of the vehicles have duly remitted Rs. 25,000/- each as compounding fee at the District Treasury, Palakkad and had submitted original chalan receipts Nos.212, 213, 214 dated 16.5.2015 before the office of the District collector, Palakkad.

4. Sec.23A of the MMDR Act reads as follows:

“Sec.23A. Compounding of offences.

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as

that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."

It is mandated in Sec.23A(2) that where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

5. It has been held by this Court in cases as in *Digil v. Sub Inspector of Police* reported in 2013 (1) KLT 600, 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."

6. In the light of these provisions it is only to be declared that in view of the provisions contained in Sec.23A of the MMDR Act, no further proceedings could be continued against the offenders in the cases in question in respect of the offence so compounded as referred to in Anx.5 order and therefore further continuation of the impugned criminal proceedings is declared to be ultra vires and unenforceable. Accordingly, necessary steps in that regard may be taken by the Station House Officer concerned to ensure that all further proceedings as per Anx.2 are lawfully terminated in this case in the light of Anx.5 order passed by the District Collector, Palakkad, which evidences compounding of the offence under Sec. 23A of the MMDR Act.

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

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///True copy///

Sd/-
ALEXANDER THOMAS, JUDGE

P.S. to Judge