

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

WA.No. 841 of 2009 () IN WP(C).9361/2009

**AGAINST THE ORDER/JUDGMENT IN WP(C) 9361/2009 of HIGH COURT OF KERALA
DATED 25-03-2009**

APPELLANT(S)/PETITIONER IN WPC::

**M/S.NETHRAVATHI ENTERPRISES,
DOOR NO.2-112(2), OPP.SARKAR LAMINATES, KALLAPU
PERMANNUR POST, MANGLORE, REPRESENTED BY
ITS MANAGING PARTNER, ABOOBACKER SIDDIQUE
S/O.ABDUL KHADER, R/AT AMAN MANZIL,
OPP. RTO CHECK POST,
THALAPPADY, MANGLORE, KARNATAKA STATE.**

BY ADV. SRI.KODOTH SREEDHARAN

RESPONDENT(S)/RESPONDENTS::

**1. STATE OF KERALA, REPRESENTED BY
SECRETARY, DEPT. OF REVENUE, SECRETARIAT
THIRUVANANTHAPURAM.**

2. DISTRICT COLLECTOR, KASARAGOD.

***ADDL.3. K.R.SUBRAMANIAN, S/O K.S.RAJAN,
R/AT SREEKRISHNA, 2/762, CANAL ROAD,
P.O.ERANCHIPALAM, KOZHIKODE DISTRICT.**

(*ADDL.R3 IS IMPEADED AS PER ORDER DATED 3/6/2009 IN IA NO.481/2009)

**ADDL.R3 BY ADV. SRI.AJEESH S.BRITE
BY SR GOVERNMENT PLEADER SRI.P.IDAVIS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

APPELLANT'S EXHIBITS

ANNEXURE 1: TRUE COPY OF THE CERTIFICATE ISSUED AT MANGLORE.

ANNEXURE I(a): TRUE COPY OF THE CERTIFICATE ENGLISH TRANSLATION.

ANNEXURE II: TRUE COPY OF THE LICENSE DT 2/6/08 ISSUED BY GOVERNMENT OF KERALA.

ANNEXURE II(a): TRUE COPY OF ENGLISH TRANSLATION OF ANN.I.

RESPONDENT'S EXHIBITS

ANNEXURE 1: TRUE COPY OF THE SALE AGREEMENT IN FAVOUR OF THE PETITIONER.

ANNEXURE II: TRUE COPY OF THE INTERIM ORDER DT 6/4/2009 BY THIS HON'BLE COURT.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 841 of 2009

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Dated this, the 31st day of August, 2015

J U D G M E N T

Ashok Bhushan, C.J.

Heard. This writ appeal has been filed against judgment dated 25th March, 2009 in WP(C) No.9361/2009. The writ petition was filed by the appellant praying for a direction to respondents to release the vehicles shown in Exts.P5 and P5(a) and the goods therein and further to set aside Exts.P7 and P7(a). Ext.P7 order dated 18th March, 2009 was issued by the District Collector, Kasaragod under the Kerala Minor Mineral Concession Rules, 1967 on a report received from Additional District Magistrate regarding seizure of lorry alleging illegal transportation of sand without permit towards Kozhikode. The seized vehicle was kept at Collectorate and the Collector passed order imposing compounding fee of ₹40,000/- in exercise of power under Rule 60A. Similar order was passed with regard to another vehicle imposing same amount. Petitioner after the said order made

deposit of the compounding fee and got the vehicle released. Petitioner filed the writ petition on the ground that there is no jurisdiction with the District Collector to impose any fine. It was further alleged that the vehicle ought to have been released on production of relevant documents. Learned Single Judge dismissed the writ petition upholding the orders passed by the District Collector. Learned counsel for the appellant challenging the order of the learned Single Judge contends that there is no jurisdiction with the District Collector to impose any kind of fine. He further submits that the issue is covered by the Division Bench judgment reported in Sanjayan v. Tahsildar (2007 (4) KLT 597).

2. We have considered the submission of the learned counsel for the parties and perused the records. The District Collector in the orders which were impugned in the writ petition had clearly referred to Rule 60A. Rule 60A of 1967 Rules which has been inserted by notification dated 24th April, 1974 provides as follows:

“60A. Compounding of offences.

(1) Any offence punishable under these rules may, either before or after the institution of the prosecution be compounded by the person authorised under rule 59 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-rule (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”.

Statutory rule specifically empowers an authority, who is competent to submit a complaint to compound an offence. It is not the case of the appellant that District Collector is not an authority who has been authorized by the Government under Rule 59. The present is not a case of imposition of any fine. The order specifically mentions of compounding fee referring to Rule 60A (2) of the 1967 Rules. The fine having not been imposed, it is

unnecessary to consider the arguments raised by the learned counsel for the appellant that Collector has no jurisdiction to impose any fine. Reliance has been made to para 6 of the judgment by the learned counsel for the appellant in Sanjayan's case (supra), which is to the following effect;

"6. Thus, it would appear to us that, whether the action is taken under the K.M.M.C. Rules read with the parent Act or under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 read with the Rules made thereunder, the power of imposition of fine rests only with the Court. All that the Revenue authorities have been empowered to do is to compound the offence. The three appellants deny that they admitted the liability and they are not willing to compound the offence. In order to avoid controversy, it is preferable that the competent authority gets an application in writing from the accused person for compounding the offence" .

The Division Bench itself has observed that the revenue authorities can compound an offence. The Division Bench further held that power to impose fine rests only with the Court. As observed above, the orders impugned in the writ petition were

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-:5:-

not orders imposing any fine. Hence the issue is irrelevant for the present case. There being a statutory provision to compound an offence and competency of Collector to compound the offence having not been challenged, we do not find any error in the judgment of the learned Single Judge dismissing the writ petition

Writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge