

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 398 of 2015 ()

PETITIONER(S) :

SAMAD P. ,
S/O.UMMER, PULLIYIL HOUSE,
CHENGOTTUR P.O. ,
MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SRI.R.RANJITH (K/489/2011) .

RESPONDENT(S) :

1. THE REVENUE DIVISIONAL OFFICER,
PERINTHALMANNA,
MALAPPURAM,
DISTRICT, PIN-679 322.
2. THE VILLAGE OFFICER,
KURUVA, MALAPPURAM DISTRICT,
PIN-676 551.

BY SENIOR GOVERNMENT PLEADER SRI. K.C.VINCENT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rvs.

WP (C) .No. 398 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1 : TRUE COPY OF ORDER DATED 10/06/2014 OF THE DISTRICT
LEVEL AUTHORIZED COMMITTEE.

EXHIBIT P2 : TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE 2ND
RESPONDENT DATED 20/12/2014.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 398 of 2015

Dated this the 7th day of January, 2015

J U D G M E N T

The petitioner is stated as aggrieved of the seizure of a 'mini lorry' bearing registration No.KL-10AG/4967, belonging to him, by the 2nd respondent on 20.12.2014, as per Ext.P2 seizure mahazar. The case of the petitioner is that, he was transporting 'ordinary earth' on the strength of Ext.P1 permit issued by the competent authority and that the transportation supported by a permit, which hence was not liable to be branded as illegal in any manner and that no offence has been committed by the petitioner under any circumstances.

2. Heard the learned Government Pleader as well. Going by the undisputed facts, Ext.P1 permit was issued on 10.06.2014. As per Clause 7 of the permit, the exercise had to be completed within 'three months', which expired on 09.09.2014. The 'ordinary earth' excavated was admittedly being taken by the petitioner in the concerned vehicle on 20.12.2014, when it was intercepted leading to Ext.P2 mahazar. On the date of transportation as above, the permit given to the concerned

person to excavate the ordinary earth, had already expired. That apart, for transportation of the material, it being a 'miner mineral' as contemplated under Section 2(e) of the MMDR Act, 1957, read with Section 4(1A) of the Act, the relevant provisions of the KMMC Rules and the law declared by this Court, it had to be supported by a valid pass/P Form. Admittedly, the petitioner does not have any case that transportation effected on 20.12.2014 was on the strength of any valid P form. This being the position, the prayer of the petitioner to release the vehicle unconditionally, is not liable to be entertained. However, it is open for the petitioner to compound the offence by virtue of the enabling provisions particularly Rule 60A of the Rules. 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 has already been considered and decided by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, holding that, once the offence is compounded, there cannot be any further prosecution proceedings. The directions given as per the above verdict are extracted below :

“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."

After hearing both the sides, this Court finds that the petitioner is also entitled to have similar relief.

4. Coming to the extent of amount to be satisfied as compounding fee, the Rules specifically stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stated as Rs.5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is stated as an offence under the 'Act' itself by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the Act itself. The

maximum fine in respect of such offence prescribed under the Act is stated as **Rs.25,000/-**. It was in the said circumstance, that this Court was passing orders enabling the party to have interim custody of the vehicle, on satisfaction of a sum of Rs.25,000/-, also directing the concerned respondent to consider the application for compounding, if any.

5. In view of the willingness expressed from the part of the petitioner to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the respondent to compound the offence, if the petitioner satisfies a sum of **Rs.25,000/-**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioner forthwith. It is made clear that once the said offence is compounded, no prosecution proceedings shall be pursued against them.

The Writ Petition stands disposed of accordingly.

The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.