

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

WP(C).No. 653 of 2015 (F)

PETITIONER(S):

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1. MIDHILESH,
AGED 27 YEARS, S/O. MOHANAHASAN, AALACKAMOLEL HOUSE,
NORTH MAZHUVANNUR, MAZHUVANNUR P.O.,
ERNAKULAM DISTRICT,
(OWNER OF LORRY BEARING REGISTRATION NO.KL.40A.4429) .
 2. TOMY ABRAHAM,
AGED 54 YEARS, S/O.ABRAHAM, NEDUMKANDATHIL HOUSE,
CHERANELLOOR P.O., PERUMBAVOOR,
ERNAKULAM DISTRICT,
(OWNER OF LORRY BEARING REGISTRATION NO.KL.7.AZ.3900) .
 3. POULOSE,
AGED 48 YEARS, S/O.IYPE, KAVIKUNNEL HOUSE,
KUNNAKKAL P.O., VALAKOM,
ERNAKULAM DISTRICT,
(OWNER OF LORRY BEARING REGISTRATION NO.KL.17.E.8527) .
 4. ANAND TOM,
AGED 22 YEARS, S/O.TOMY, NEDUMKANDATHIL HOUSE,
CHERANELLOOR P.O., PERUMBAVOOR,
ERNAKULAM DISTRICT
(OWNER OF LORRY BEARING REGISTRATION NO.KL.40.B.3592) .
 5. RAJESH K.R. ,
AGED 35 YEARS, S/O.RAJAN, KOTHIRICKAL HOUSE,
KANJOOR P.O., PARAPPURAM,
ERNAKULAM DISTRICT
(OWNER OF LORRY BEARING REGISTRATION NO.KL.41.D.9752) .

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

THE SUB INSPECTOR OF POLICE,
PERUMBAVUR POLICE STATION,
ERNAKULAM DISTRICT. PIN - 682 587.

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXHIBIT P1. COPY OF THE SEIZURE MAHAZAR DATED 4.1.2015 PREPARED BY
THE RESPONDENT.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 653 of 2015

Dated this the 13th day of January, 2015

J U D G M E N T

The petitioners are the owners of vehicles bearing registration No.KL-40-A-4429, KL-7-AZ-3900, KL-17-E-8527, KL-40-B-3592 and KL-41-D-9752. The learned counsel for the petitioners submits that the vehicles were taken to custody when no 'ordinary earth' was being transported, which fact is discernible from Ext.P1 mahazar. This being the position no offence is made out and the seizure is *per se* wrong and illegal in all respects.

2. The learned Government Pleader appearing for the respondent submits that the information was obtained at the Police Station at about 12.30 a.m. on 04.01.2015, as to the illegal activity being committed by the parties concerned, in dumping waste in 'Navarathna School' compound unauthorisedly. Immediately, the Police rushed to the site and by 12.40 a.m. in the morning, when the vehicles were found in the premises of the School compound and Drivers were also there. By that time, the Tipper vehicles had already unloaded the ordinary earth in the

School compound. It was accordingly, that Ext.P11 mahazar was prepared and further steps are being pursued in accordance with law. The learned counsel for the petitioners submits that the petitioners are ready to compound the offence.

3. Section 23A of the Act and Rule 60A of the Rules enable the party to have the offence 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 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 petitioners are 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 parties to have interim custody of the vehicles, on satisfaction of a sum of Rs.25,000/- each, 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 petitioners 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 petitioners satisfy a sum of **Rs.25,000/- each**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicles shall be released to the petitioners forthwith. It is made clear that once the offence alleged against the petitioners is compounded, no prosecution proceedings shall be pursued against them.

The Writ Petition stands disposed of accordingly.

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

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.