

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 19TH DAY OF JANUARY 2015/29TH POUSHA, 1936

WP(C).No. 1915 of 2015 (L)

PETITIONER :

**SADIQUE BASHA, AGED 38 YEARS,
S/O. HUSSAIN KHAN, RESIDING AT 330/93,
KUNNATHUR P.O., UTHANGARI TALUK,
KRISHNAGIRI, TAMILNADU,
(DRIVER OF JCB BRARING REGISTRATION NO.TN-30-AK-8336)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS :

- 1. THE SUB INSPECTOR OF POLICE.
CHALISSERY POLICE STATION, PALAKKAD DISTRICT-679303.**
- 2. STATE OF KERALA REPRESENTED BY JOINT SECRETARY
TO GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**

R1 & R2 BY GOVERNMENT PLEADER SRI.K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 1915 of 2015 (L)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE SEIZURE MAHAZAR DT 15/1/2015 PREPARED BY THE R1.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 1915 of 2015

Dated this the 19th day of January, 2015

J U D G M E N T

Petitioner is the owner of a JCB bearing Reg. No. TN-30-AK-8336, which was seized by the 1st respondent, alleging illegal transportation of 'red earth'/soil. The case of the petitioner is that the petitioner has not used the vehicle in contravention of any provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967, or the Kerala Conservation of Paddy land and Wet Land Act (Act 28 of 2008). The learned counsel for the petitioner submits that the vehicle was being used to transport 'Ordinary earth' covered by valid permit/P Form.

2. Heard the learned Government Pleader as well, who submits that, no supporting document was there and that the offence involved is under the MMDR Act/ KMMC Rules. No offence under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 or 'Sand Act' is stated as involved. Learned counsel for the petitioner submits that the petitioner is 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 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 offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

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 concerned respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.