

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 30TH DAY OF JANUARY 2015/10TH MAGHA, 1936

WP(C).No. 3105 of 2015 (K)

PETITIONER(S):

- 1. RAVEENDRAN NAIR, AGED 35 YEARS,
S/O.VIKRAMAN NAIR, MELEPUTHEN VEEDU, CHEMBOOR,
OTTASEKHARAMANGALAM, THIRUVANANTHAPURAM.**
- 2. RAJENDRAN, AGED 50 YEARS,
S/O.PRABHAKARAN NAIR, ROHINI, ANAPPARA,
VELLARADA. P.O., THIRUVANANTHAPURAM.**
- 3. RAHILA BEEVI, AGED 38 YEARS,
W/O.ABDUL SALAM, 1/453(432), MUMTHAZ BHAVAN,
KUDAPPANAMOODU, AMBOORI, THIRUVANANTHAPURAM.**
- 4. SAJEEV, AGED 37 YEARS,
S/O.RAJAYYAN, 2/63, ARADIKKARA PUTHEN VEEDU,
MANATHOTTAM, VELLARADA, THIRUVANANTHAPURAM.**

BY ADV. SRI.SHAJIN S.HAMEED.

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM,
OFFICE OF THE DISTRICT COLLECTOR,
KUDAPPANAKKUNNU, THIRUVANANTHAPURAM-695 001.**
- 2. THE SUB INSPECTOR OF POLICE,
VELLARADA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT-695 102.**

BY SR. GOVT. PLEADER SRI.JOSEPH GEORGE.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- P1- PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE BEARING REGISTRATION NUMBER KL-19-D-4965 OF THE 1ST PETITIONER.**
- P1(A)- PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE BEARING REGISTRATION NUMBER KL-51-A-7331 OF THE 1ST PETITIONER.**
- P2- PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE BEARING REGISTRATION NUMBER KL-19-B-3625 OF THE 2ND PETITIONER.**
- P3- PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE BEARING REGISTRATION NUMBER KL-19-B-2294 OF THE 3RD PETITIONER.**
- P4- PHOTOCOPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE BEARING REGISTRATION NUMBER KL-13-V-8849 OF THE 4TH PETITIONER.**
- P5- PHOTOCOPY OF THE MAHAZAR PREPARED BY THE SUB INSPECTOR OF POLICE, VELLARADA POLICE STATION DATED 24.01.2015.**
- P6- PHOTOCOPY OF THE REPORT NO.23/GL/15-SIVLDA OF THE 2ND RESPONDENT.**
- P7- PHOTOCOPY OF THE COMPOUNDING PETITION FILED BY THE 1ST PETITIONER DATED 26.01.2015 BEFORE THE 2ND RESPONDENT.**
- P8- PHOTOCOPY OF THE COMPOUNDING PETITION FILED BY THE 2ND PETITIONER DATED 26.01.2015 BEFORE THE 2ND RESPONDENT.**
- P9- PHOTOCOPY OF THE COMPOUNDING PETITION FILED BY THE 3RD PETITIONER DATED 26.01.2015 BEFORE THE 2ND RESPONDENT.**
- P10- PHOTOCOPY OF THE COMPOUNDING PETITION FILED BY THE 4TH PETITIONER DATED 26.01.2015 BEFORE THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.3105 of 2015

Dated this the 30th day of January, 2015

JUDGMENT

The 1st petitioner is the owner of the JCB, earth mover vehicle bearing Reg. No.KL-19-D-4965 and MGV-Tipper vehicle bearing Reg. No.KL-51-A-7331, the 2nd petitioner is the owner of LGV-Tipper vehicle bearing Reg. No.KL-19-B-3625, the 3rd petitioner is the owner of LGV-Tipper vehicle bearing Reg. No.KL-19-B-2294 and the 4th petitioner is the owner of LGV-Tipper vehicle bearing Reg. No.KL-13-V-8849, which were seized by the 2nd respondent alleging illegal transportation of 'red earth'. The case of the petitioners is that, the petitioners have not used the vehicles 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 petitioners submits that the vehicles were being used to transport 'red 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.

3. The learned counsel for the petitioners submits that the petitioners are ready to compound the offence and that they have already filed Exts.P7 to P10 applications before the second respondent in this regard.

4. 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.

5. 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.

6. 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 2nd 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 the writ petition, before the 2nd respondent, for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE**

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