

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 3586 of 2015 (W)

PETITIONER :

**SANDEEP, S/O.SURESH, AGED 20 YEARS,
RESIDING AT KOTHECHIRA HOUSE, THURAVOOR,
KUTHIYATHODU VILLAGE, THIRUMALA BHAGAM,
CHERTHALA TALUK, ALAPPUZHA DISTRICT,
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-32-F-8494).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE VILLAGE OFFICER, KUMBALAM VILLAGE,
ERNAKULAM DISTRICT-682 864.**
- 2. THE SUB COLLECTOR,
FORTKOCHI, ERNAKULAM DISTRICT-682 001.**
- 3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

R1 TO R3 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.3586/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE SEIZURE MAHAZAR DATED 30/01/2015 PREPARED BY THE FIRST RESPONDENT.**
- P2 COPY OF THE GO(MS).NO.20/14/ID DATED 12/2/2014 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIAL DEPARTMENT, GOVERNMENT OF KERALA**
- P3 COPY OF THE INTERIM ORDER DATED 7/4/2014 IN WP(C).NO.8183 OF 2014 OF THIS HONOURABLE COURT.**
- P4 COPY OF THE INTERIM ORDER DATED 30/01/2015 IN WP(C).NO.3100 OF 2015 OF THIS HONOURABLE COURT.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 3586 of 2015

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Dated, this the 5th day of February, 2015

JUDGMENT

The petitioner is the owner of the vehicle bearing No. **KL 32 F 8494**, which was taken into custody as per Ext. P1 mahazar dated 30.01.2015 allegedly by the first respondent for violation of the provisions under the Kerala Minor Mineral Concession Rules 1957. The main contention raised by the petitioner is that no offence has been committed by him either under the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 and that the first respondent does not have any power, competency, jurisdiction or authority to have seized the vehicle. Reference is also made to Ext. P2 notification issued by the Government on 12.02.2014, wherein particulars of the designated officers have been mentioned therein. It is pointed out that name of the first respondent does not figure anywhere in Ext. P2, hence the writ petition challenging the competency of the first respondent to have seized the vehicle.

2. The learned counsel for the petitioner points out that under similar circumstances Ext. P3 interim order was passed by a Division

Bench of this Court, enabling the petitioner therein to release vehicle on depositing a sum of Rs.25,000/-. The learned counsel for the petitioner seeks for similar relief in the present case as well.

3. The learned Government Pleader points out that the idea and understanding of the petitioner is thoroughly wrong and misconceived. It is pointed out that the vehicle in fact was transporting ordinary earth without any valid pass issued by the competent authority and that the vehicle was not seized by the first respondent on his own motion, but the seizure was effected as directed by the Sub Collector, Fort Cochin, who is an authority notified by the Government as per Ext. P2, particularly at serial No.3. It is also pointed out that, when the petitioner was directed to produce valid document, if any, no such document was ever produced before the Sub Collector, as noted in Ext. P1. This made the concerned authority to seize the vehicle alleging infringement of the relevant provisions of the law. It is stated that the vehicle is now kept under the custody of the S.I. of Police, Panangad Police Station, as evident from Ext. P1

4. After hearing both the sides, this Court finds that the course of action to be pursued is to cause the vehicle to be produced before the concerned Judicial First Class Magistrate's

Court, if the petitioner is not intending to compound the offence. The learned counsel for the petitioner submits that the petitioner is ready to compound the offence.

5. Section 23A of the 'Act and Rule 60A of the Rules enable the parties to have the offence compounded. 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 has been passing various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

6. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence

is compounded in accordance with the relevant provisions. This issue 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.

7. In view of the law declared as mentioned herein before, there will be a direction to the concerned S.I. of Police (Panangad Police Station) to accept the application if any filed by the petitioner to compound the offence; which shall be considered and appropriate orders shall be passed so as to release the vehicle forthwith, subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

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

The writ petition is disposed of.

Sd/-

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