

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 3874 of 2015 (H)

PETITIONER(S):

**MUNEER, AGED 34 YEARS
S/O SHAMSUDHEEN KUNJU. SUBAHANA MANZIL
PALLISSERIKKAL P.O., SASTHAMKOTTA VILLAGE
KUNNATHUR TALUK,
KOLLAM DISTRICT
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-17-E-9175).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

**THE SUB INSPECTOR OF POLICE
KARUNAGAPPILLY POLICE STATION,
KOLLAM DISTRICT, PIN:672 303.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 3874 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE CASH MEMORANDUM DATED 2.2.2015 ISSUED BY AN EARTH DEALER BY NAME ABDUL RASHIK TO THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE DEALERS LICENCE DATED 26.2.2014 ISSUED TO ABDUL RASHIK BY THE DEPARTMENT OF MINING AND GEOLOGY.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 23.1.2015 IN WPC NO.2549 OF 2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.3874 of 2015

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Dated this the 10th day of February, 2015

JUDGMENT

The petitioner is the owner of the lorry bearing registration No.KL-17-E-9175, which was seized by the respondent on 02.02.2015 alleging illegal transportation of ordinary earth without any authority or permission. The case of the petitioner is that, it was supported on the strength of Ext.P1/Cash Memorandum dated 02.02.2015 and the seizure is per se wrong and illegal in all respects and hence, the challenge.

2. The learned Government Pleader appearing for the respondent submits that when the vehicle was intercepted, no supporting document was there in the vehicle, nor was it presented at any point of time. Ext.P1 has been produced only subsequently along with the writ petition and as such, the offence committed by the petitioner in terms of the MMDR Act/KMMC Rules requires to be proceeded further. In view of the disputed question of fact, the issue can be resolved only by way of further

proceedings, particularly by way of prosecution proceedings. The learned counsel for the petitioner submits that the petitioner would like to compound the offence and an opportunity may be given in this regard.

3. Section 23A of the 'MMDR Act' and Rule 60A of the 'KMMC Rules' enable the party to have the offence compounded. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/Rules 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 has passed

orders enabling the parties 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 is 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