

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. 4216 of 2015 (B)

PETITIONER(S):

**SUKESH S., AGED 23 YEARS,
S/O.SUNDARESAN, V.S.BHAVAN, PANDARAVILA,
KALAKKODU P.O., BHOOHAKKULAM,
KOLLAM DISTRICT. (OWNER OF A TIPPER
LORRY BEARING REGISTRATION NO.KL-02-AE-8108)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

**THE SUB INSPECTOR OF POLICE,
OCHIRA 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:**

msv/

WP(C).No. 4216 of 2015 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF FIRST INFORMATION REPORT DATED 6-2-2015 NO.196 OF 2015 OF OCHIRA POLICE STATION.

EXT.P2 - TRUE COPY OF THE CASH MEMORANDUM DATED 6-2-2015 ISSUED BY AN EARTH DEALER BY NAME ABDUL RASHIK TO THE PETITIONER.

EXT.P3 - TRUE COPY OF THE DEALERS LICENCE DATED 26-2-2014 ISSUED TO ABDUL RASHIK BY THE DEPARTMENT OF MINING AND GEOLOGY.

EXT.P4 - 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

Msv/

P.R.RAMACHANDRA MENON, J.

=====

W.P.(C) No.4216 of 2015

=====

Dated this the 10th day of February, 2015

JUDGMENT

Petitioner is aggrieved with the seizure of the vehicle bearing Reg. No. **KL-02-AE-8108**, by the respondent on 06.02.2015 alleging illegal transportation of 'Ordinary earth' without any authority and permission in contravention of the relevant provisions of the 'MMDR Act, 1957'/'KMMC Rules. The learned counsel for the petitioner submits that there is absolutely no reason to have seized the vehicle as the petitioner was transporting ordinary earth on the basis of well supporting documents, particularly Ext.P2/Cash Memorandum.

2. The learned Government Pleader appearing for the respondent submits that no such document was there in the vehicle when it was intercepted, nor was it produced at any point of time, which in fact has been specifically noted in Ext.P1. Since there is a disputed question of fact, it requires to be resolved by way of appropriate proceedings before the concerned Magistrate's Court where Ext.P1 is pending in connection with the steps for

prosecution. No offence under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 or 'Sand Act' is stated as involved. The learned counsel for the petitioner submits that the petitioner might be permitted to compound the offence, in view of the enabling provisions.

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

vdv