

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 4743 of 2015 (P)

PETITIONER(S) :

**SIVAN P.K, AGED 60 YEARS,
S/O.KESAVAN, AMBADI HOUSE, CHEEPUNKAL(PO),
ARPOOKARA, KOTTAYAM DISTRICT, PIN- 686 563.**

**BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KOTTAYAM, KOTTAYAM DISTRICT, PIN- 688 001.**
- 2. CIRCLE INSPECTOR OF POLICE,
KADATHURITHY POLICE STATION, KADATHURITHY (PO),
KOTTAYAM DISTRICT, PIN- 686 604.**
- 3. SUB INSPECTOR OF POLICE,
KADATHURITHY POLICE STATION, KADATHURITHY (PO),
KOTTAYAM DISTRICT, PIN- 686 604.**

BY SR.GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 4743 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION
DATED 04.02.2011 IN RESPECT OF THE PETITIONER'S VEHICLE.**

**EXHIBIT P2: TRUE COPY OF THE SEIZURE MAHAZAR DATED 06.02.2015 PREPARED
BY THE 2ND RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE APPLICATION DATED 10.02.2015 FILED BY
THE PETITIONER BEFORE THE 3RD RESPONDENT FOR
COMPOUNDING THE OFFENCE.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 4743 of 2015

Dated this the 13th day of February, 2015

J U D G M E N T

Petitioner is the owner of the vehicle/MGV-Tipper bearing Reg. No. KL-45-8333, which was seized by the 2nd respondent, alleging illegal transportation of 'ordinary earth'. 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.

Pn