

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

WP(C).No. 4799 of 2015 (Y)

PETITIONER :

**MUNEER, S/O.CHERIYAMU MUSLIYAR, AGED 38 YEARS,
PALLIYALIL HOUSE, KALADY P.O., MALAPURAM,
OWNER OF TIPPER BEARING NO. KL- 54-D-5086 & KL-55-M-244.**

BY ADV. SRI.S.SHAJAHAN (ADOOR)

RESPONDENT :

**THE SUB INSEPCTOR OF POLICE,
PONNANI, MALAPPURAM DISTRICT - 679 576.**

BY SR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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WP(C).NO.4799/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1(A) COPY OF THE SAID SEIZURE MAHAZAR DATED 02/02/2015 PREPARED BY THE RESPONDENT.

P1(B) COPY OF THE SAID SEIZURE MAHAZAR DATED 02/02/2015 PREPARED BY THE RESPONDENT.

P2 COPY OF THE PERMIT ISSUED BY THE VATTAKULAM GRAMA PANCHAYATH DATED 29/1/2015

P3 COPY OF THE G.O.(P)NO.93/2014/ID DATED 30/06/2014

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

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P.R. RAMACHANDRA MENON, J.

W.P(C). No. 4799 of 2015

Dated this the 18th day of February, 2015

J U D G M E N T

The petitioner approached this Court aggrieved by the seizure of the vehicles bearing Nos.KL-54-D-5086 & KL-55-M-244, belonging to him alleging violation of the relevant provisions of the MMDR Act, 1957/'KMMC Rules, 1967 Rules. Exts.P1(a) (b) are the 'seizure mahazars' in respect of the concerned vehicles. The case of the petitioner is that, the petitioner is having Ext.P2 permit issued by the Local Authority and by virtue of Ext.P3 Government Order, the steps taken by the respondent against the petitioner are *per se* wrong and illegal in all respects and hence the challenge.

2. Heard the learned Government Pleader as well, who points out that, the Government Order sought to be relied on only enables to carry out excavation to the requisite extent, if at all any building permit has been obtained from the Local authority, when no NOC does require in the said circumstances. But for transporting a minor mineral, issuance of necessary 'P Form' by the Geologist is necessary and admittedly, the petitioner does not

have any such 'P Form'. The Geologist is not made in the party array. In the said circumstances, the proceedings are to be taken to a logical conclusion by the respondent by proceedings with further steps in respect of the offences involved by filing proper complaint before the concerned Magistrate's Court having jurisdiction over the area by the competent authority, unless the offence is sought to be compounded by the petitioner. In the said circumstances, there will be a direction to the respondent to take further steps for causing the vehicles to be produced before the Magistrate's Court and also by filing necessary complaint in connection with the prosecution proceedings. This will not bar in the way of the petitioner if the offence is sought to be compounded as mentioned above.

3. 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.

4. 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.

5. The directions given as per the above verdict is 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."

In view of the law declared as mentioned herein before, if any application is filed by the petitioner to compound the offence; it has to be considered and appropriate orders are to be passed in terms of the decision rendered by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)** forthwith.

6. If for any reason, the relief sought for is declined, intending to proceed with the prosecution steps, interim custody of the vehicles shall be released to the petitioner on satisfaction of a sum of Rs. 25,000/- (Rupees twenty five thousand only) in respect of each vehicle and on giving an undertaking that the

vehicles will be produced as and when required; that the vehicles will not be alienated and that no action will be pursued so as to diminish the value of the vehicles during the pendency of the proceedings.

7. 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.

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