

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. 4951 of 2015 (T)

PETITIONER(S) :

**ABDUL RAJEESH, AGED 38 YEARS,
S/O.SIDHIQ RAWTHER, RAJEESH MANZIL,
ERUMAKUZH, PALAMEL, NOORANADU, MAVELIKARA.
(OWNER OF LORRY BEARING REGISTRATION NUMBER
KL-04-Y-2983).**

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, CIVIL STATION,
KAKKANAD- 682 030.**
- 2. THE SUB INSPECTOR OF POLICE,
ALUVA WEST POLICE STATION, ALUVA,
ERNAKULAM DISTRICT, PIN- 683 542.**

BY 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:**

Msd.

WP(C).No. 4951 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE
NO.KL-04-Y-2983.**

**EXHIBIT P2: TRUE COPY OF THE SEIZURE MAHAZAR DATED 14.02.2015 PREPARED
BY THE SECOND RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 23.05.2013 IN
W.P.(C).NO.12868 OF 2013.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 4951 of 2015

Dated this the 18th day of February, 2015

J U D G M E N T

Petitioner is the owner of the vehicle bearing Reg.No.KL-04-Y-2983. The issue involved in this case is, whether the petitioner who has been proceeded against in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 is entitled to have the offence compounded in view of the desire expressed from his side in this regard.

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 pointing out that, no NOC does require in the said circumstances. But for transporting a miner 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.

3. 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.

4. Unlike the Kerala Protection of River Banks and Regulation of Removal of Sand Act, there cannot be any confiscation of the vehicle in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 or the Kerala Minor Mineral Concession Rules, 1967. 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 was passing various orders in connected similar matters enabling the concerned petitioner to have the interim custody of the vehicle released on satisfaction of a sum of Rs. 25,000/- and also by directing the concerned respondent to consider the application for compounding, if any.

5. 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.

6. 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."

After hearing both the sides, this Court finds that the petitioner is entitled to have similar relief.

7. In view of the law declared as mentioned herein before, there will be a direction to the concerned respondent to accept the application filed/to be filed by the concerned petitioner to compound the offence; which shall be considered and appropriate orders shall be passed in terms of the decision rendered by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)** forthwith.

8. If for any reason, the relief sought for is declined, intending to proceed with the prosecution steps, interim custody

of the vehicle shall be released to the concerned petitioner on satisfaction of a sum of Rs. 25,000/- (Rupees twenty five thousand only) and on giving an undertaking that the vehicle will be produced as and when required; that the vehicle will not be alienated and that no action will be pursued so as to diminish the value of the vehicle during the pendency of the proceedings.

The writ petition is disposed of.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Pn