

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WP(C).No. 5405 of 2015 (A)

PETITIONER(S):

**K.P.MOHAMMED AYOOB, AGED 45 YEARS
S/O.KOMU MOIDEEN, KUDUKKILPERUNCHEERI HOUSE
VALIYAPARAMBU (PO), PULIKKAL, MANJERI
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.R.BINDU (SASTHAMANGALAM)
SRI.PRASANTH M.P**

RESPONDENT(S):

- 1. THE VILLAGE OFFICER,
PULIKKAL VILLAGE, PULIKKAL, MANJERI
MALAPPURAM DISTRICT, PIN - 676 121.**
- 2. THE DEPUTY COLLECTOR,
MALAPPURAM, PIN - 676 505.**
- 3. THE DISTRICT COLLECTOR,
MALAPPURAM, PIN - 676 505.**
- 4. THE GEOLOGIST,
MINING & GEOLOGY DEPARTMENT, MANJERI, MALAPPURAM
PIN - 676 505.**
- 5. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT
DEPARTMENT OF REVENUE, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM, PIN - 695 001.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 5405 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE SEIZURE MAHAZAR DATED 31.01.2015.

EXT.P2: TRUE COPY OF THE KYCHIT DATED 31.01.2015.

EXT.P3: TRUE COPY OF THE STOP MEMO DTED 31.01.2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.5405 OF 2015
.....

Dated this the 20th February, 2015

J U D G M E N T

The petitioner, who is the owner of Tata Hitachi Machine, is aggrieved of the seizure of the Machine vehicle on 31.01.2015, alleging that the machine was being used illegally for quarrying purposes. Subsequently, the Machine was released to the petitioner with a direction to keep it in safe custody. The petitioner is questioning the authority of the respondent /Village Officer, who seized the Machine.

2. The learned Government Pleader points out that the authority of the respondent /Village Officer to seize the vehicle , with reference to the relevant provisions of the MMDR Act/KMMC Rules had already come up for consideration before this Court and as per the judgment reported in **Aloshias C.Antony vs. Government of Kerala** (2014(1) KLT 536), the position has been answered against the persons like the petitioner. The learned Counsel for the petitioner submits that the petitioner is ready to compound the offence and that an opportunity might be given to get the machine released after satisfying the compounding fee.

3. 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.

4. Heard the learned Government Pleader as well.

5. 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 has been passing various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on

satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

6. 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.

7. In view of the law declared as mentioned herein before, there will be a direction to the fourth respondent/Geologist to consider the application filed by the petitioner to compound the offence; and pass appropriate orders forthwith, subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

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