

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. 5477 of 2015 (H)

PETITIONER :

**SIJO, SON OF DEVASSY, AGED 31 YEARS,
THEKKAN HOUSE, CHENNAIPARA P.O.,
PEECHI VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER
MR.BIJUMON K.A. SON OF ABRAHAM, AGED 41 YEARS,
KUNNUPURATH HOUSE, PEECHI P.O.,
PEECHI VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT (OWNER OF LORRY BEARING
REGISTRATION NO.KL 45- E- 2640) .**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE ASSISTANT SUB INSPECTOR OF POLICE,
PEECHI POLICE STATION,
THRISSUR DISTRICT- 680 001**
- 2. THE SUB INSPECTOR OF POLICE,
PEECHI POLICE STATION, THRISSUR DISTRICT -680 001**

R1 & R2 BY SR 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:**

sts

WP(C).No. 5477 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE MAHASSAR DATED 10.02.2015 PREPARED BY THE FIRST RESPONDENT**
- P2: TRUE COPY OF THE P FORM DATED 10.02.2015 ISSUED BY MR. VARGHESE COUNTER SIGNED BY THE DEPARTMENT OF MINING AND GEOLOGY.**
- P3: TRUE COPY OF THE GO(MS)NO.20/14/ID DATED 12.02.2014 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT , INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

sts

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.5477 of 2015

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Dated this the 20th day of February, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing No.KL-45-E-2640 The said vehicle has been taken to custody by the 1st respondent as per Ext.P1 Seizure Mahazar dated 10.2.15, for the reason that no valid pass in support of the material transported was there at the time of interception. This made the petitioner to approach this Court by filing the writ petition stating that the proceedings pursued by the 1st respondent is per se wrong and illegal in all respects, so far as the transportation was being done on the strength of Ext.P2 valid pass.

2. Heard the learned Government Pleader as well.

3. It is seen from the pleadings and proceedings that the interception was made, as per Ext.P1 Mahazar, at 10.15 am and there is no dispute regarding the facts as well in this regard. When it comes to Ext.P1 pass, it was issued by the

dealer at Pattikkad to transport the materials from Manjakkunnu to Pattikkad. This was issued at 10.05 am on the very same date and the same has been wrongly entered as 10.02.2014. It has to be presumed that the pass was taken from Pattikkad to Manjakkunnu and thereafter the material was transported, if the version of the petitioner is true, leading to interception made by the 1st respondent at the place mentioned in Ext.P1. This exercise, possibly could not have been done within a gap of 10 or 15 minutes, submits the learned Government Pleader.

4. In any view of the matter, this Court does not propose to go into the merits of the case as the disputed question of facts has to be established before the competent Forum in view of the offences stated as committed by the petitioner in violation of Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 . There will be a direction to the respondents to produce the vehicle before the Judicial Magistrate having jurisdiction over the area along with a complaint with regard to the

offences involved. This shall be done at the earliest, at any rate within a period of 'one week' from the date of receipt of a copy of the judgment. It is open for the petitioner to approach the learned Magistrate for appropriate reliefs. It is made clear that, if the petitioner opts to compound the offence by filing any petition before the second respondent, it can be compounded, subject to payment of compounding fee of **₹25000/-**. Once it is compounded, no further prosecution will lie, in view of the law declared by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**.

With the above observations, the writ petition is disposed of

**P.R.RAMACHANDRA MENON,
JUDGE**

sj