

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 5478 of 2015 (H)

PETITIONER(S):

1. JOMON ABRAHAM, AGED 31 YEARS,
S/O ABRAHAM, NO.7A, ARTEC DEEPAM,
MUGHAKKADU LANE, ANAYARA P.O., KADAKAMPALLI VILLAGE,
THIRUVANANTHAPURAM DISTRICT,
(OWNER OF TATA HITACHI EXCAVATOR AND MOTOR
CYCLE BEARING REGISTRATION NO.KL-1-P-8376 AND TWO PUMP SETS)
2. MANJU MATHEW, AGED 30 YEARS,
W/O JOMON ABRAHAM, NO.7A, ARTEC DEEPAM,
MUGHAKKADU LANE, ANAYARA P.O., KADAKAMPALLI VILLAGE,
THIRUVANANTHAPURAM TALUK,
THIRUVANANTHAPURAM DISTRICT,
(OWNER OF MARUTHI SWIFT CAR BEARING REGISTRATION
NO.KL-62-A-7413 AND A MOTOR CYCLE BEARING
REGISTRATION NO.KL-62-A-7210).

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. THE VILLAGE OFFICER, KADAKAMBILLY VILLAGE,
THIRUVANANTHAPURAM-695 029.
2. THE SUB COLLECTOR,
THIRUVANANTHAPURAM, THIRUVANANTHAPURAM-695 001.
3. THE DISTRICT COLLECTOR,
THIRUVANANTHAPURAM-695 001.
4. THE PROJECT MANAGER,
NIRMIDHI KENDRAM, THIRUVANANTHAPURAM, PIN:695001.
5. NIRMIDHI KENDRAM,
THIRUVANANTHAPURAM, PIN:695 001,
REPRESENTED BY THE PROJECT MANAGER.

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**6. INSPECTOR OF POLICE,
MEDICAL COLLEGE POLICE STATION,
THIRUVANANTHAPURAM-695 029.**

**7. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, INDUSTRIAL DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN:695 029.**

R1 TO R4, R6 & R7 BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE PHOTOGRAPHS OF THE VARIOUS STAGES OF FILTERING SAND
FROM THE WASTE FROM THE DRAINAGE AND BUILDING WASTE.**

**EXHIBIT P2: TRUE COPY OF THE MAHASSAR DATED 10.2.2015 PREPARED BY THE
FIRST RESPONDENT.**

**EXHIBIT P3: TRUE COPY OF THE APPLICATION DATED 12.2.2015 SUBMITTED BY THE
PETITIONER BEFORE THE THIRD RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv**/**

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5478 of 2015

Dated this the 9th day of April, 2015

JUDGMENT

Alleging offence under the MMDR Act/KMMC Rules, a car bearing Registration No.KL-62-A-7413 and a Motor Cycle bearing Registration No.KL-62-A-7210 belonging to the 2nd petitioner and a TATA HITACHI excavator and Motor Cycle bearing registration No.KL-1-P-8376 belonging to the 1st petitioner along with two pump sets were taken into custody. This made the petitioners to approach this Court by filing the writ petition.

2. When the matter came up for consideration before this Court on 23.02.2015, the following interim order was passed:

"Learned Government Pleader appearing for respondents 1 to 4, 6 and 7 submits on instructions that, absolutely no licence/permit or sanction has been produced by the petitioners to sustain the so-called experiment and activities being pursued in the premises.

2. Petitioners are required to implead the local authority and the authorities of the Pollution Control Board in the party array. Urgent notice on admission to the 5th respondent by speed post returnable within two weeks.

3. The motor cycle bearing registration No. KL-1-P-8376 belonging to the 1st petitioner and the Maruthi Swift Car bearing NO. KL-62-A-7413 and motor cycle bearing No. KL-62-A-7210

*belonging to the 2nd petitioner shall be released to the petitioners forthwith, on execution of a simple bond, also giving an undertaking that the same will be produced as and when necessary, till the proceedings are finalized. 'Status quo' shall be maintained with regard to the sand and other materials collected from the premises till the next date of posting. No further operation shall be pursued by the petitioners until sanction is obtained from the Pollution Control Board and the Local Authority.
Post after two weeks."*

Pursuant to the said interim order, the Car as well as the Motor Cycles stand already released to the petitioners. The rest is with regard to the excavator and two pump sets.

3. The learned counsel for the petitioners submits that, the petitioners are ready to compound the offence and seeks for permission to have the excavator as well as the pump sets to be released.

4. The issue involved in this case is, whether the petitioners, who have 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, 2015, is entitled to have the offence compounded in view of the desire expressed from the part of the petitioners in this regard.

5. Heard the learned Government Pleader as well.

6. Section 23A of the 'Act' and the relevant 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' by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the 'Act' itself. 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.

7. 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.

8. In view of the law declared as mentioned herein before, there will be a direction to the 1st respondent to consider the application filed by the petitioners 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. On such an event, the competent authority shall also consider whether any further proceedings should be pursued in respect of the Car and the Motor Cycles, which were ordered to be released as per the interim order dated 23.02.2015, which are not stated as directly involved in the alleged offence.

The petitioners shall produce a copy of this judgment, along with a copy of this writ petition, before the 1st respondent, for further steps.

The writ petition is disposed of.

Sd/-

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

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