

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. 5503 of 2015 (K)

PETITIONER(S):

- 1. BABU A.M., S/O.MOHANAN,
AREEPADAM HOUSE, HOUSE NO.4/26,
U.C.COLLEGE.P.O, ALUVA, ERNAKULAM.**
- 2. MOHAMMED RAFEEQ,
KALATHINKAL MUNDETH, KIZHAKKAMBALAM,
CHELAKKULAM, PERUMBAVOOR, ERNAKULAM.**

**BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN**

RESPONDENT(S):

- 1. THE SUB INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
ERNAKULAM DISTRICT, PIN - 686 666.**
- 2. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, ERNAKULAM DISTRICT, PIN - 686 661.**

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:**

mbr/

WP(C).No. 5503 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER
LORRY BEARING REG.NO.KL-07 AP 2212.

EXT. P2 : TRUE COPY OF THE RETAIL INVOICE DATED 31.10.2011.

EXT. P3 : TRUE COPY OF THE REPORT NO.111/TD/15/F1 SUBMITTED BY THE
1ST RESPONDENT.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

= = = = =

W.P.(C) No.5503 of 2015

= = = = =

Dated this the 20th day of February, 2015

JUDGMENT

The 1st petitioner is the owner of a Tipper lorry bearing Reg. No. **KL-07-AP-2212** and the 2nd petitioner is the owner of an excavator (Tata Hitachi Model Ex 110 Hydraulic Excavator), which were seized by the 1st respondent alleging illegal transportation of 'Ordinary earth' in contravention of the relevant provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967. The learned counsel for the petitioners submits that the petitioners would like to have the offence compounded and that the above mentioned vehicles might be caused to be released after accepting the compounding fee.

2. Heard the learned Government Pleader as well, who submits that, no valid supporting document was there and that the offence involved is under the MMDR Act/ KMMC Rules. No offence under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 or 'Sand Act' is stated as involved.

3. Section 23A of the 'MMDR Act' and Rule 60A of the

'KMMC Rules' enable the party to have the offence compounded. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/Rules 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. The directions given as per the above verdict are 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 petitioners are also entitled to have similar relief.

4. 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 ₹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 **₹25,000/-**. It was in the said circumstance, that this Court has passed orders enabling the parties to have interim custody of the vehicles, on satisfaction of a sum of **₹25,000/- each**, also directing the concerned respondent to consider the application for compounding, if any.

5. In view of the willingness expressed from the part of the petitioners to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the respondent to

compound the offence, if the petitioners satisfy a sum of **₹25,000/- each**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioners forthwith. It is made clear that once the offence alleged against the petitioners is compounded, no prosecution proceedings shall be pursued against them.

The writ petition is disposed of accordingly. The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent for further steps.

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

sj