

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WP(C).No. 5627 of 2015 (C)

PETITIONER :

**MUHAMMED HANEEFA, AGED 40 YEARS,
S/O. ABBAS, MONAKA DREAM HOUSE, MADUR,
KOTEKAR P.O., D.K.DISTRICT, KARNATAKA STATE.**

**BY ADVS.SMT.HEMALATHA
SRI.BINU GEORGE**

RESPONDENTS :

- 1. DISTRICT COLLECTOR,
KASARAGOD, PIN-671 121.**
- 2. SUB DIVISIONAL MAGISTRATE,
HOSDURG, KASARAGOD DISTRICT-671121**
- 3. THE SUB INSPECTOR OF POLICE,
BEKAL POLICE STATION, KASARAGOD DISTRICT-671123.**

R1 TO R3 BY GOVERNMENT PLEADER SRI. JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : COPY OF REGISTRATION CERTIFICATE OF TIPPER BEARING
NO.KA-19/D 8131.
- P2 : COPY OF PERMIT NO.14910 DTD.2.6.2014 ISSUED BY MINES AND GEOLOGY
DEPARTMENT, GOVT. OF KARNATAKA.
- P3 : COPY OF SEIZURE MAHAZAR IN CRIME NO.448/2014 OF THE BEKAL POLICE
STATION.
- P4 : COPY OF THE ORDER DTD.13.8.2014 SUB DIVISIONAL MAGISTRATE,
KASARAGOD AT KANHANGAD.
- P5 : COPY OF THE ORDER OF THE DISTRICT COLLECTOR, KASARAGOD
AS G2-39921/2014, DTD....01.2015.

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

//TRUE COPY//

P.A.TO JUDGE

bp

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 5627 of 2015

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Dated, this the 5th day of March, 2015

JUDGMENT

The petitioner is the owner of the tipper lorry bearing No. **KA 19 D 8131**, which was seized by the 3rd respondent at about 9 a.m. on 03.06.2014. The said vehicle was intercepted by the third respondent, alleging illegal transportation of river sand as stated in Ext. P6 mahazar (substituted in place of Ext. P3 as per order dated 05.03.2014 in I.A. No. 3230 of 2015). According to the petitioner, the commodity transported in the vehicle was nothing but 'ordinary sand' from the State of Karnataka, transported on the strength of Ext. P2 pass/permit, which also contained the number of the vehicle in which the earth was transported. Met with the situation, the petitioner approached the second respondent. But without any regard to the facts and figures, proceedings were finalized as per Ext.P4 dated 13.08.2014, whereby a finding was rendered as to the commission of offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act and the vehicle was ordered to be confiscated. The petitioner preferred revision before the District

Collector/first respondent and produced all the relevant materials, including Ext. P2 pass. The said pass was got verified by the first respondent from the Deputy Director, Mines and Geology Department, whereby it was revealed that the pass was genuine, but for the fact that it was valid only in the State of Karnataka. As such, no offence under the Kerala Protection of River Banks and Regulation of Removal of Sand Act was involved and the offence could only be under the the Mines and Minerals (Development and Regulation) Act or the Kerala Minor Mineral Concession Rules. Based on the request made through the learned counsel for the petitioner to have the offence compounded, permission was granted and the revision petition was disposed of, passing Ext. P5 order, granting release of the vehicle, but imposing a sum of Rs. 1 lakh as 'fine'. This made the petitioner to approach this Court stating that Ext. P5 order is highly arbitrary and illegal in all respects.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader

3. There is no dispute with regard to the factual position and the commodity transported by the petitioner has come to be

concluded as 'ordinary earth' and not 'river sand'. The grievance is mainly with regard to the 'fine' imposed by the District Collector. The version of the petitioner is that, there is no power vested with the District Collector to have imposed 'fine', which power is actually vested with the Court. This Court finds considerable force in the said submission. But on considering the entire facts and circumstances, it is revealed that the term 'fine' used in Ext. P5 order is actually the 'compounding fee', as discernible from the last and penultimate paragraphs of Ext. P5, more so, in the context of having made an application by the petitioner to compound the offence. The remaining question is only with regard to the quantum of compounding fee.

4. 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 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.

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. It was accordingly that this Court was permitting the party concerned to compound the offence of this nature by paying **Rs.25,000/-** as compounding fee in all such cases. But this is a case where something more is also involved. It is not a case where the transportation of ordinary sand has been effected within the State. The ordinary sand was brought from the State of Karnataka and by virtue of the ban imposed in the said State, as

revealed from Ext. P2 pass, it is valid only in the State of Karnataka and as such the violation of relevant provisions of law as applicable in the State of Karnataka is also involved. The petitioner was consciously knowing that pass was valid only in Karnataka. Still, he sought to violate the provisions and brought the materials to the State of Kerala. While exercising the discretionary jurisdiction of this Court, it cannot but be mentioned that the petitioner is a person, who consciously sought to violate the provisions under two different heads. With regard to the quantum of fee payable for compounding the offence, as mentioned already, maximum amount has to be restricted to the maximum of fine payable for the offence, if punishable with only fine. But since the offence involved herein is one under Section 4 (1A) of the MMDR Act, which also prescribes punishment of imprisonment, restriction of ceiling is not applicable in the case of the petitioner and as such, there is no illegality in passing Ext. P5 order. However, considering the fact that this Court have passed various orders permitting the parties concerned to compound the offence by satisfying Rs.25,000/- as the compounding fee, this Court finds it fit and proper to have Ext. P5 modified by reducing the compounding fee to **Rs.50,000/-** in place

of Rs. 1 lakh. The said amount shall be deposited by the petitioner forthwith, at any rate, within one week from the date of receipt of a copy of this judgment. It is made clear that once the offence is compounded, no prosecution proceeding shall lie against the petitioner. If the compounding fee as above is not satisfied by the petitioner within the stipulated time, if is for the concerned respondent to have seized the vehicle proceeding with further steps by way of prosecution.

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

The writ petition is disposed of.

sd/-

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

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