

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

WP(C).No. 5858 of 2015 (F)

PETITIONER :

**HAMSA, AGED 33 YEARS,
S/O ABDULLA, KOTTAPURATH HOUSE, MARAMPALLY P.O.,
VAZHAKKULAM VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT (OWNER OF LORRIES
BEARING REGISTRATION NO.KL-40-E-2435
KO-41-F-7336, KL-41-F-9107, KL-41-G-4205)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS :

**THE SUB INSPECTOR OF POLICE,
THADIYITTAPARAMBU POLICE STATION,
ERNAKULAM DISTRICT - PIN:682 505.**

BY GOVERNMENT PLEADER MR. M.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 24-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

WP(C).No. 5858 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE MAHAZAR DATED 16.2.2015 PREPARED BY THE
RESPONDENT.**

**EXHIBIT P2: TRUE COPY OF THE FIRST INFORMATION REPORT NO.0156
DATED 16.2.2015 OF THADIYITTAPARAMBU POLICE STATION.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5858 of 2015

Dated this the 24th day of February, 2015

JUDGMENT

The petitioner is the owner of the lorries bearing Reg. Nos.KL-40-E-2435, KL-41-F-7336, KL-41-F-9107 and KL-41-G-4205, which were seized by the respondent/Sub Inspector of Police alleging illegal transportation of 'ordinary earth'. The case of the petitioner is that, the petitioner has not used the vehicles in contravention of any provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967, or the Kerala Conservation of Paddy land and Wet Land Act (Act 28 of 2008). The learned counsel for the petitioner submits that the vehicles were being used to transport 'ordinary earth' covered by valid permit/P Form.

2. Heard the learned Government Pleader as well, who submits that, no 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, 1957 and the relevant Rules and Rule 32 of the Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015 enable the party to have the offence compounded. The question whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act 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 petitioner is also entitled to have similar relief.

4. The learned counsel for the petitioner submits that, by virtue of the new rule formulated by the Government as per the Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015, the maximum penalty, that could be imposed upon the offenders, is only to the tune of Rs.5,000/- (Rupees Five thousand only). But in response to the submission made by the learned Government Pleader referring to the mandate of the statutory provisions under the 'Act' including the relevant provisions with regard to penalty, the learned counsel concedes that the offence concerned is punishable with imprisonment as well and not with fine alone. As such, the ceiling prescribed under the Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015 is not applicable and the petitioner is ready to compound the offence, subject to appropriate orders to be passed by this Court.

5. 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 Rs.5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is 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. It was in the said circumstance, that this Court was passing orders enabling the party to have interim custody of the vehicle, on satisfaction of a sum of Rs.25,000/-, also directing the concerned respondent to consider the application for compounding, if any.

6. In view of the willingness expressed from the part of the petitioner 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 petitioner satisfies a sum of **Rs.25,000/- in respect of each vehicle**. It is ordered accordingly. On satisfaction of the compounding fee, the vehicles shall be released to the petitioner forthwith. It is made clear that once the offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

The Writ Petition stands disposed of accordingly.

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

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

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