

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No. 5873 of 2015 (H)

PETITIONER:

K.NASAR, AGED 37 YEARS
S/O. K.MUHAMMAD, KULARKKUZHIYIL HOUSE, KUMBIDI P.O.
PALAKKAD DISTRICT.

BY ADV. SRI.K.DILIP

RESPONDENTS:

1. THE STATE OF KERALA
REP. BY THE SECRETARY TO THE GOVT. REVENUE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. THE VILLAGE OFFICER
ANAKKARA, PALAKKAD DISTRICT-678001.
3. THE ADDITIONAL TAHASILDAR
TALUK OFFICE, PATTAMBI-678531.

R BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1- A TRUE COPY OF THE AGREEMENT OF VEHICLE LEASE EXECUTED BY THE PETITIONER IN FAVOUR OF SHAHUL HAMEED DATED 16-01-15.

EXHIBIT P2- A TRUE COPY OF THE DETAILED ESTIMATE FOR THE CONSTRUCTION OF THE UMMATHUR CANAL CULVERT DATED NIL.

EXHIBIT P3- A TRUE COPY OF THE SEIZURE MAHAZAR DATED 18-02-2015.

EXHIBIT P4- A TRUE COPY OF THE G.O.(MS) NO. 20/14/ID DATED 12-2-14.

EXHIBIT P5- A TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 19-02-2015.

EXHIBIT P6- A TRUE COPY OF THE CERTIFICATE ISSUED BY THE MEMBER OF ANAKKARA GRAMA PANCHAYAT IN FAVOUR OF THE PETITIONER DATED 19-02-15.

EXHIBIT P7- A TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 19-02-15.

EXHIBIT [8 -A TRUE COPY OF TE P-FORM ISSUED BY THE MINING AND GEOLOGY DEPARTMENT IN FAVOUR OF THE VEHICLE BEARING REGISTRATION NO. KL-08-AH-5995 DATED 18.2.2015.

RESPONDENT'S EXHIBITS: NIL

TRUE COPY

PA TO JUDGE

Scl.

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5873 of 2015

Dated this the 27th day of February, 2015.

JUDGMENT

The petitioner is the owner of the vehicle bearing registration No.KL-8-AH-5995, which was seized by the second respondent as per Ext.P3 mahazer dated 18.2.2015 for alleged illegal transportation of ordinary earth.

2. According to the petitioner, the transportation was being done in conformity with all the statutory requirements and on the basis of the valid pass, a copy of which is produced as Ext.P8 along with I.A.No.2982 of 2015. This being the position, there is no rhyme or reason for having the seizure effected by the second respondent.

3. The learned Government Pleader appearing for the respondents submits with reference to the contents of Ext.P3 mahazer that, when the interception was made, absolutely no document was produced by the person, who was in control of

the vehicle at the point of time. The inspection was conducted as specifically directed by the Sub Collector and the factual possession is discernible from Ext.P3.

4. In view of the disputed question of facts as above, the next cause of action is to cause the vehicle to be produced before the concerned Magistrate's Court, who is having jurisdiction over the area and to proceed with further steps for prosecution, unless the offence is sought to be compounded by the petitioner.

In such circumstance, respondents 2 and 3 are directed to produce the vehicle bearing registration No.KL-8-AH-5995 before the concerned Magistrate Court forthwith, at any rate, within 'three days' from the date of receipt of a copy of this judgment. It will open for the petitioner to approach the concerned Magistrate Court for getting interim custody of the vehicle subject to appropriate terms to be fixed by the learned Magistrate. It is also open for the petitioner, if so advised, to have the offence compounded in terms of the enabling provisions under the statute, subject to satisfaction of a sum of

Rs.25,000/- as compounding fee. If the offence is compounded as above, no further prosecution proceedings will lie in view of the decision in **Digil v. Sub Inspector of Police (2013 (1) KLT 600)**. The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Scl.