

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. 6031 of 2015 (D)

PETITIONER :

**P.PAYOOB, AGED 28 YEARS,
S/O.KUNCHU MUHAMMAD P.P,
PADINHARE PEEDIKAYIL HOUSE,THRITHALA (P.O),
PATTAMBI (VIA), PALAKKAD DISTRICT- 679 534**

BY ADV. SRI.K.DILIP

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO THE GOVT. REVENUE DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM- 695 001**
- 2. THE VILLAGE OFFICER, KUTTIPPURAM - 679 571**
- 3. THE TAHASILDAR,
TALUK OFFICE, TIRUR - 679 101.**

R1 TO R3 BY SR 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:**

sts

WP(C).No. 6031 of 2015 (D)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - A TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED IN
FAVOUR OF THE PETITIONER DATED 21-01-2011.
- EXT.P2 - A TRUE COPY OF THE SEIZURE MAHAZAR PREPARED BY THE 2ND
RESPONDENT DATED 12-02-2015
- EXT.P3 - A TRUE COPY OF THE ASSIGNMENT DEED NO.794/2014 DATED
17-02-2014
- EXT.P4 - A TRUE COPY OF THE DRAFT DATA BANK REGARDING THE
PROPERTY ATTESTED BY THE AGRICULTURAL OFFICER,
KUTTIPPURAM DATED NIL
- EXT.P5 - A TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE
PETITIONER BEFORE THE 3RD RESPONDENT DATED 23-2-15
- EXT.P6 - A TRUE COPY OF THE REPRESENTATION FILED BY ABDUL NASAR
BEFORE THE 3RD RESPONDENT DATED 23-2-2015

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.R. RAMACHANDRA MENON J.

~~~~~

W.P.(C) No. 6031 of 2015

~~~~~

Dated, this the 27th day of February, 2015

JUDGMENT

The petitioner is the owner of the vehicle bearing No. **KL 52 C 2510**, which was seized by the second respondent, as per Ext. P2 mahazar dated 12.02.2015, alleging that the petitioner was attempting to fill some paddy land. The case of the petitioner is that no such offence has been committed by the petitioner and the property concerned herein is actually a reclaimed land and that the property is never included in the data bank register, a copy of which has been produced as Ext. P4. This made the petitioner to approach this Court by filing the present writ petition.

2. Heard the learned Government Pleader as well.

3. After going through the pleadings and proceedings, this Court finds that the reference as to the nature of the property, as contained in Ext. P2 mahazar cannot be correct and even otherwise, the interception of the vehicle was when the loaded vehicle was came on the way. But the fact remains that no documents, particularly the valid pass issued by the concerned authority was there to support the transaction and as such, it has to be presumed that petitioner has committed offence under the Mines and Mineral (Development and Regulation) Act, 1957 and the relevant Rules. The next question is

whether the matter is to be remitted for prosecution proceedings, unless the petitioner intends to compound the offence. The learned counsel for the petitioner submits that the petitioner is ready to compound the offence.

4. Heard the learned Government Pleader as well.

5. 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.

6. 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.

7. In view of the law declared as mentioned herein before, the petitioner is permitted to compound the offence, subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee before the second respondent. Once the compounding fee is paid, no prosecution proceedings shall lie against the petitioner.

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

The writ petition is disposed of.

Sd/-

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

kmd