

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. 6363 of 2015 (U)

PETITIONER :

**G.SETHU, AGED 35 YEARS,
S/O.GOVINDARAJI, RESIDING AT 3/27B,
UTHANGARAI, KRISHNAGIRI DISTRICT - 635 207.**

**BY ADVS.SRI.RAAJESH S.SUBRAHMANIAN
SRI.V.R.RAJESH**

RESPONDENTS :

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, ALLAPUZHA - 688 001.**
- 2. REVENUE DIVISIONAL OFFICER,
CHENGANNUR - 688 101.**
- 3. SUB INSPECTOR OF POLICE,
CHENGANNUR - 688 101.**

R1 TO R2 BY SENIOR 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:**

bp

WP(C).No. 6363 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE INVOICE OF THE HITACHI EXCAVATOR
DATED 29/02/2004.

EXT.P1(A): TRUE COPY OF THE SALE DEED DATED 23/07/2012.

EXT.P2: TRUE COPY OF THE SEIZURE MAHAZAR DATED 23/02/2015 PREPARED
BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.6363 of 2015

Dated this the 27th day of February, 2015.

JUDGMENT

Petitioner is the owner of a Hitachi Excavator, which was seized by the third 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 petitioner submits that the petitioner would like to have the offence compounded and that the above mentioned vehicle 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 the relevant 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 petitioner is 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 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 orders enabling the parties 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.

5. 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 third respondent to compound the offence, if the petitioner satisfies a sum of Rs. 25,000/-. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle 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 is disposed of accordingly. The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the third respondent for further steps.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Scl.