

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WP(C).No. 6775 of 2015 (V)

PETITIONERS:

1. NIYAS,
S/O.KUNJUMHAMMED, KANJIRAKUZHIL HOUSE,
ERAMALLOOR P.O., KUTTILANJI, NELLIKUZHIL,
KOTHAMANGALAM, ERNAKULAM.
2. BAIJU, S/O.KURIAKOSE,
AMBAZAPPANKUDI HOUSE, URULANTHANNY P.O.,
KUTTAMPUZHA, KOTHAMANGALAM.
3. ABILASH, S/O.SIVARAJAN,
THEKKEMANGATTIL HOUSE,
THIRUMARADY P.O., KOTHATTUKULAM.
4. BINOY, S/O.THANKAPPAN,
MALIYEKUDY HOUSE, URULANTHANNY P.O.,
KUTTAMPUZHA, KOTHAMANGALAM.

BY ADVS.SRI.T.A.UNNIKRISHNAN,
SRI.K.S.PRAVEEN.

RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE,
KOTHAMANGALAM POLICE STATION,
ERNAKULAM DISTRICT, PIN-686 666.
2. THE REVENUE DIVISIONAL OFFICER,
MUVATTUPUZHA, ERNAKULAM DISTRICT-686 661.

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:

- P1:- TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE EXCAVATOR
BEARING REG NO. KL-01-AT 2205.
- P2:- TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER LORRY
BEARING REG NO. KL-10-AK 4943.
- P3:- TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER LORRY
BEARING REG NO. KL-48-B 2523.
- P4:- TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE
BEARING REGISTRATION NO. KL-05 AF 1104.
- P5:- TRUE COPY OF THE REPORT NO. 139/TD/15/F1/SUBMITTED BY
THE 1ST RESPONDENT DATED 02/03/2015.

RESPONDENT'S EXHIBITS:

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 6775 of 2015

Dated this the 4th day of March, 2015

J U D G M E N T

Petitioners are the owners of the vehicles bearing Reg. Nos. KL-01-AT-2205, KL-10-AK-4943, KL-48-B-2523 & KL-05 AF 1104 which was seized by the 1st respondent, alleging illegal transportation of 'ordinary earth'. The case of the petitioners is that the petitioners have 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 petitioners 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. Learned counsel for the petitioners submits that the petitioners are ready to compound the offence.

3. Section 23A of the Act and the relevant Rules 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 petitioners are 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 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.

5. In view of the willingness expressed from the part of the petitioners to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the 1st respondent to compound the offence, if the petitioners satisfy 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 petitioners forthwith. It is made clear that once the offence alleged against the petitioners are compounded, no prosecution proceedings shall be pursued against them.

The Writ Petition stands disposed of accordingly.

The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the 1st respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Pn