

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. 6906 of 2015 (K)

PETITIONERS:-:

1. UDAYAKUMAR, AGED 39 YEARS,
S/O.BALAKRISHNAN, ANTHALANKAVU MARATH, THALLOOR P.O.,
THAVANOOR VILLAGE, PONNANI TALUK, MALAPPURAM DISTRICT
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-11-AA-9818).
2. AZEEZ, AGED 52 YEARS,
S/O.ALIKOYA, PALLIKANDI THIRUTHUNGAL, AYNKALAM P.O.,
THAVANOOR VILLAGE, PONNANI TALUK, MALAPPURAM DISTRICT
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-56-E-8862).
3. ABDULLA, AGED 50 YEARS,
S/O.MUHAMMED HAJI, ARRUKANDATHIL, AYANKALAM P.O.,
THAVANOOR VILLAGE, PONNANI TALUK, MALAPPURAM DISTRICT
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-55-7523).

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS:-:

1. THE SUB INSPECTOR OF POLICE,
VALANCHERY POLICE STATION,
MALAPPURAM DISTRICT - 685 101.
2. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

R1 & R2 BY GOVERNMENT PLEADER SRI.K.C.VINCENT

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

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT P1 : TRUE COPY OF THE SEIZURE MAHASSAR DATED 27-02-2015 IN
CONNECTION WITH THE VEHICLE OF FIRST PETITIONER PREPARED BY
THE FIRST RESPONDENT.**

**EXT P2 : TRUE COPY OF THE SEIZURE MAHASSAR DATED 27-02-2015 IN
CONNECTION WITH THE VEHICLE OF SECOND PETITIONER PREPARED BY
THE FIRST RESPONDENT.**

**EXT P3 : TRUE COPY OF THE SEIZURE MAHASSAR DATED 27-02-2015 IN
CONNECTION WITH THE VEHICLE OF THIRD PETITIONER PREPARED BY
THE FIRST RESPONDENT**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R.RAMACHANDRA MENON, J.
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W.P.(C) No.6906 of 2015
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Dated this the 4th day of March, 2015

JUDGMENT

The 1st petitioner is the owner of the vehicle bearing Reg. No. **KL-11-AA-9818**, 2nd petitioner is the owner of the vehicle bearing Reg. No. **KL-56-E-8862** and 3rd petitioner is the owner of the vehicle bearing Reg. No. **KL-55-7523**, which were seized by the 1st 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 petitioners submits that the petitioners would like to have the offence compounded and that the above mentioned vehicles 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 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 has passed 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 petitioners to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the respondents 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 is compounded, no prosecution proceedings shall be pursued against him.

The writ petition is disposed of accordingly. The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent for further steps.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

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