

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 11619 of 2013 (B)

PETITIONER(S):

1. **ABDUL RAHIM, AGED 25 YEARS,
S/O.C.B, .PAREEKUTTY, CHAMAKKADI,
SOUTH VAZHAKKULAM P.O., VAZHAKKULAM VILLAGE,
KUNNATHUNADU TALUK,
ERNAKULAM (OWNER OF LORRY BEARING
REGISTRATION NUMBER KL-40-F-6157).**
2. **SHAJI, AGED 42 YEARS,
S/O.NARAYANAN, MANGALATHEN HOUSE, POOTHAMKUTTY,
IDUKKI. (DRIVER OF LORRY BEARING
REGISTRATION NUMBER KL-40-F-6157)**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. **THE ADDITIONAL THAHSILDAR,
CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN-688 011.**
2. **THE TAHSILDAR,
CHERTHALA TALUK, ALAPPUZHA DISTRICT, PIN-688 011.**

BY GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1 TRUE COPY OF THE MAHAZAR PREPARED BY THE FIRST
RESPONDENT DATED 20.4.2013.**
- EXHIBIT-P2 TRUE COPY OF THE CASH MEMORANDUM DATED 20.4.2013 FOR
TRANSPORTATION OF ORDINARY EARTH.**
- EXHIBIT-P3 TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT
DATED 14.12.2012 IN WP(C)29993 OF 2012.**
- EXHIBIT-P4 TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT
DATED 23.4.2013 IN WP(C)11124 OF 2013.**
- EXHIBIT-P5 TRUE COPY OF THE APPLICATION SUBMITTED BY THE SECOND
PETITIONER BEFORE THE SECOND RESPONDENT DATED 20.4.2013.**
- EXHIBIT-P6 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 27.03.2013 IN WP(C)8688 OF 2013.**
- EXHIBIT-P7 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 15.03.2013 IN WP(C)6481 OF 2012.**
- EXHIBIT-P8 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 11.05.2012 IN WP(C)11203 OF 2012.**
- EXHIBIT-P9 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 05.06.2012 IN WP(C)12878 OF 2012.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 11619 of 2013

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Dated, this the 26th day of February, 2015

JUDGMENT

The vehicle bearing No. **KL 40 F 6157** was seized by the **2nd respondent/Deputy Tahasildar** alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the **2nd** respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the **2nd** respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing reliance on the judgment rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala**

[2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on **30.04.2013**, the vehicle was caused to be released, **on satisfaction of a sum Rs.25,000/-** and **on execution of a simple bond**. In the said circumstance, the further course of action required is to surrender the vehicle before the 2nd respondent, so as to enable the 2nd respondent to produce it before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The petitioner expresses desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioner to have the offence compounded on satisfying the compounding fee of Rs.25,000/-. The amount ordered to be paid as per the interim order dated **30.04.2013** shall be treated as compounding fee and offence shall be treated as compounded. Once the offence is compounded, no prosecution proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013

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(1) KLT 600]. It shall be reported to the concerned Magistrate, if the crime has already been reported. If there is any failure in satisfying the compounding fee, the 2nd respondent shall pursue further steps in connection with the prosecution before the concerned Magistrate having jurisdiction over the area.

The writ petition is disposed of.

Sd/-

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

kmd