

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 9805 of 2015 (A)

PETITIONERS:

1. SURESH KUMAR, AGED 42 YEARS,
S/O. KRISHNAN KUTTY,
VISHNU BHAVANAM, MUTTOM,
HARIPPAD.
2. BIJU KUMAR, AGED 32 YEARS,
S/O. MANIYAN,
THEKKATHINTE THEKKATHIL,
PATHIYOOR, ALAPPUZHA.
3. AJAYAKUMAR, AGED 51 YEARS,
S/O. LATE RAGHAVAN PILLAI,
RAJ BHAVANAM, KOZHUVALLOOR,
CHENGANNUR.
4. SALEELA, AGED 46 YEARS,
W/O. AJAYAKUMAR,
RAJ BHAVANAM, KOZHUVALLOOR,
CHENGANNUR - 689 121.

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENTS:

1. SUB DIVISIONAL MAGISTRATE,
REVENUE DIVISIONAL OFFICE,
CHENGANNUR - 689 121.
2. SUB INSPECTOR OF POLICE,
POLICE STATION, CHENGANNUR.

R BY SRI. JOSEPH GEORGE, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 9805 of 2015 (A)

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : COPY OF THE R.C BOOK.
EXT.P2 : COPY OF THE MAHAZAR.
EXT.P3 : COPY OF THE REPORT FILED BY THE SUB DIVISIONAL
MAGISTRATE.
EXT.P4 : COPY OF THE PERMIT ISSUED BY THE GEOLOGIST.
EXT.P5 : COPY OF THE PASS ISSUED BY THE GEOLOGIST.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 9805 of 2015 (A)

Dated this the 26th day of March, 2015.

JUDGMENT

Petitioners are the owners of tipper lorries bearing registration Nos. KL-57 B-8265 and KL-01 AW-9467 and JCBs bearing registration Nos. KL-30 C 668 and KL-73-5197, which were seized by the second respondent alleging illegal excavation of red earth in contravention of the relevant provisions of the 'MMDR Act, 1957'/'KMMC Rules. 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 released after accepting the compounding fee.

2. The issue involved in this case is, whether the petitioners, who have been proceeded against in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 2015, are entitled to have the offence compounded in view of their desire expressed in that regard.

3. Heard the learned Counsel for the petitioners and the

learned Government Pleader, apart from perusing the record.

4. 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 to be ₹ 5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is stated to be 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 deposit of a sum of ₹ 25,000/-, apart from directing the respondent concerned to consider the application for compounding, in statutory terms.

5. A question arose before this Court 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 *Digil v. Sub Inspector of Police*¹, holding that once the offence is compounded, there cannot be any further prosecution proceedings.

¹ 2013(1) KLT 600

6. In view of the petitioners' willingness to have the offence compounded admitting the guilt, this Court finds it fit and proper to direct the first respondent to compound the offence, if the petitioners deposit a sum of ₹ 25,000/-. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle 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 is disposed of accordingly. The petitioners shall produce a copy of this judgment along with a copy of this writ petition before the first respondent for further steps.

sd/- DAMA SESHADRI NAIDU, JUDGE.

