

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 10028 of 2015 (C)

PETITIONER(S) :

**JAMES MATHAI, AGED 46 YEARS,
S/O.KOSHY MATHAI, MUDITHARAYIL, PUNTHALA P.O,
VENMONY, ALAPPUZHA- 689 503.**

BY ADV. SMT.ASHA ELIZABETH MATHEW

RESPONDENT(S) :

**SUB INSPECTOR OF POLICE,
POLICE STATION, VENMONY- 690 504.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 10028 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: A TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF JCB
EXCAVATOR BEARING REGISTRATION NO.KL-30-1787.**

**EXHIBIT P2: A TRUE COPY OF THE MAHAZAR PREPARED BY
THE RESPONDENT IN RESPECT OF THE SEIZURE OF
THE PETITIONER'S VEHICLE.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON J.

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Dated, this the 27th day of March, 2015

JUDGMENT

The petitioner, who is the owner of **JCB Excavator** bearing No. **KL 30 1787**, is aggrieved of the seizure of the excavator on 25.03.2015 by the second respondent, alleging that the vehicle was being used illegally excavation of ordinary earth. The learned counsel for the petitioner submits that the petitioner is ready to compound the offence.

2. The issue involved in this case is, whether the petitioner, who has 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 is entitled to have the offence compounded in view of the desire expressed from his side in this regard.

3. Heard the learned Government Pleader as well.

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 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 various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

5. A question arose before this Court as to 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 **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, holding that, once the offence is compounded, there cannot be any further prosecution proceedings.

6. In view of the law declared as mentioned herein before, there will be a direction to the respondent to consider the application filed by the petitioner to compound the offence; and pass appropriate orders forthwith, subject to satisfaction of a

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: 3 :

sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

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

The Writ Petition is disposed of.

Sd/-

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

kmd