

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 30TH DAY OF MARCH 2015/9TH CHAITHRA, 1937

WP(C).No. 10226 of 2015 (C)

PETITIONER :

**SHEMEER,
S/O.KUNJU MOHAMMED, AGED 37 YEARS,
KALATHIL HOUSE, VENGOLA.P.O., ERNAKULAM,
OWNER OF TIPPER BEARING NO.KL-40-D-4159)**

BY ADV. SRI.S.SHAJAHAN (ADOOR)

RESPONDENT :

**THE SUB INSPECTOR POLICE
KOTTAPURAM, ERNAKULAM DISTRICT-683 101**

BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.10226/2015

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE SAID SEIZURE MAHAZAR DATED 26/03/2015 PREPARED BY THE RESPONDENT.

P2 COPY OF THE COMPOUNDING APPLICATION MADE BY THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.A.TO JUDGE

sts

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 10226 of 2015

Dated this the 30th day of March, 2015

J U D G M E N T

Petitioner is the owner of the vehicle bearing Reg. No. **KL-40-D-4159**, which was seized by the respondent alleging illegal transportation of 'red earth' in contravention of the relevant provisions of the 'MMDR Act, 1957'/'KMMC Rules. The learned counsel for the petitioner submits that the petitioner would like to have the offence compounded and that the above mentioned vehicle might be caused to be released after accepting the compounding fee.

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, 2015 is entitled to have the offence compounded in view of the desire expressed from the part of the petitioner 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 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. 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 willingness expressed from the part of the petitioner to have the offence compounded, conceding the

guilt, this Court finds it fit and proper to direct the respondent to compound the offence, if the petitioner files an application and satisfies a sum of **Rs. 25,000/-** towards compounding fee. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioner forthwith. It is made clear that once the offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

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

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.