

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 7TH DAY OF APRIL 2015/17TH CHAITHRA, 1937

WP(C).No. 10746 of 2015 (P)

PETITIONER(S):

**MERCY JOSEPH,W/O.JOSEPH,
AGED 52 YEARS, MANDAKATHIL HOUSE,
KATTACHIRA P.O., ETTUMANOOR VILLAGE,
KOTTAYAM TALUK, KOTTAYAM DISTRICT,
(OWNER OF A LORRY BEARING REGISTRATION
NO.KL-5-AB-4494 AND JCB BEARING
REGISTRATION NO.KL-35-F-4617.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

**THE SUB INSPECTOR OF POLICE, ETTUMANOOR POLICE STATION,
KOTTAYAM DISTRICT, PIN-688 521.**

BY SENIOR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 10746 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1:TRUE COPY OF THE MAHASSAR DATED 28.3.2015 PREPARED BY THE
RESPONDENT.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

MsV/

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.10746 of 2015

Dated this the 7th day of April, 2015

JUDGMENT

The petitioner, who is the owner of a lorry bearing registration No.KL-5-AB-4494 and JCB bearing registration No.KL-35-F-4617, is aggrieved of the seizure of the vehicles by the respondent on 28.03.2015, alleging that the above vehicles were being used for extraction and loading of 'ordinary earth'.

2. The learned Counsel for the petitioner submits that the petitioner is ready to compound the offence and that an opportunity might be given to get the vehicles released, after satisfying the compounding fee.

3. 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.

4. Heard the learned Government Pleader as well.

5. 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.

6. 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.

7. 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 sum of **Rs.25000/- in respect of each vehicle** 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 a copy of this writ petition, before the respondent, for further steps.

The writ petition is disposed of.

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

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