IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No. 11274 of 2015 (H)

PETITIONER:

MUHAMMED ISMAIL,
S/O.MOIDEEN KUNHI, 37 YEARS,
MADATHIL HOUSE, POST VELIMANNA,
THAMARASSERY, KOZHIKODE DISTRICT.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENT(S):

1. **THE DISTRICT COLLECTOR,**
   OFFICE OF THE DISTRICT COLLECTOR,
   CIVIL STATION, KOZHIKODE - 673 001.

2. **THE SUB INSPECTOR OF POLICE,**
   THAMARASSERY POLICE STATION,
   KOZHIKODE - 673 001.

BY SENIOR GOVERNMENT PLEADER SRI. K.C.VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 11274 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE TRADEMARK AUTHORITY.

EXHIBIT P2 : TRUE COPY OF THE LICENSE OBTAINED FROM THE LOCAL AUTHORITY.

EXHIBIT P3 : TRUE COPY OF THE CERTIFICATE ISSUED BY THE DISTRICT INDUSTRIES CENTRE.

EXHIBIT P4 : TRUE COPY OF THE LICENSE ISSUED BY THE GEOLOGIST.

EXHIBIT P5 : TRUE COPY OF THE NOTICE NO.236/G1/15 DATED 26 MARCH 2015 ISSUED BY THE 2ND RESPONDENT (ORDER CHALLENGED)

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 11274 of 2015

Dated this the 10th day of April, 2015

JUDGMENT

The grievance of the petitioner is with regard to the alleged high handed activity being pursued by the 2nd respondent/Sub Inspector of Police in detaining the custody of the vehicle bearing No. KL-57-H-1498 which was originally seized in respect of Crime No. 136/2015 involving offence under Section 4(1)(A) read with Section 21(1) of the MMDR Act and the relevant Rules. On moving the concerned Judicial Magistrate having jurisdiction over the area, by filing necessary petition, the interim custody was ordered to be released to the petitioner. It is stated that, in spite of the fact that the 2nd respondent was aware of the same, the interim custody is not released.

2. The learned Government Pleader submits that the petitioner is virtually a habitual offender in view of the repeated instances and that the action taken by the 2nd respondent is only in conformity with the relevant provisions of law. The learned Government Pleader also submits that the matter has already

been reported to the 1st respondent in view of the repeated offence under various provisions of law and to take appropriate steps under the special statute of 'KAPPA' as well.

3. However, an interim order has been passed to release the vehicle, on execution of a 'simple bond', as directed by the learned Magistrate. The same has to be given effect to by the 2nd respondent, if no other cause of action or any other offence is involved in connection with the said vehicle. Admittedly, the said vehicle is still in the custody of the Police. It seems thats that there is no other chance for the petitioner to have used the vehicle for any other offence during the said period.

4. In the above circumstance, there will be a direction to the 2nd respondent to give effect to the order stated as passed by the learned Magistrate, immediately, on production of a certified copy of the order/verdict by the petitioner, subject to the conditions, if any, ordered by the learned Magistrate. The 2nd respondent shall proceed with further steps, so as to cause the prosecution proceedings pursued by the Magistrate, by submitting the final report or such other proceedings as the case

may be. The proceedings shall be taken to a logical conclusion by the Judicial Magistrate. This However will not stand in the way of the petitioner to have the offence compounded by virtue of the enabling provision, if so desired and if so advised, subject to satisfaction of ₹25,000/- towards compounding fee. Once the offence is compounded, no prosecution proceedings will lie, in view of the ruling rendered by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)** and on such an event, the outcome shall be intimated to the learned Magistrate for appropriate steps.

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

The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON,
JUDGE.

kp/-