

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 12091 of 2014 (J)

PETITIONER(S):

**MOHAMMED SHIHABUDHEEN, AGED 31 YEARS
S/O.ALIYAMU, AMBALAKULAM HOUSE, CHOORAKKODE P.O,
VALLAPUZHA, PATTAMBI TALUK, PALAKKAD.
(OWNER OF LORRY BEARING REGISTRATION NO.KL-8-AL-251).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

- 1. THE DEPUTY TAHASILDAR,
PATTAMBI, PALAKKAD DISTRICT, PIN-679 303.**
- 2. THE REVENUE DIVISIONAL OFFICER (RDO),
OTTAPPALAM, PALAKKAD DISTRICT, PIN-679 101.**
- 3. THE DISTRICT COLLECTOR,
PALAKKAD DISTRICT, PIN-678 001.**
- 4. THE DIRECTOR,
MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTOM, THIRUVANANTHAPURAM, PIN-695 001.**

BY GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-02-2015, ALONG WITH W.P.(C).NO.4401 OF 2015 THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : TRUE COPY OF THE MAHAZAR PREPARED BY THE FIRST
RESPONDENT DATED 09.04.2014.
- EXT.P2 : TRUE COPY OF THE REPRESENTATION DATED 10.04.2014 SUBMITTED
BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXT.P3 : TRUE COPY OF THE REPRESENTATION SUBMITTED BY
THE PETITIONER BEFORE THE SECOND RESPONDENT
DATED 10.04.2014.
- EXT.P4 : TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT
DATED 04.04.2014 IN W.P.(C).NO.9990 OF 2014.

RESPONDENT(S)' ANNEXURES :

ANNEXURE R2(A): TRUE COPY OF THE STATEMENT FILED BY THE PETITIONER.

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

W.P.(C) Nos.12091 of 2014 & 4401 of 2015

Dated this the 12th day of February, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing Registration No.KL-8-AL-251, which was taken into custody by the first respondent on 09.04.2014, alleging illegal transportation of river sand. This made the petitioner to approach this Court by filing WP(C) No.12091 of 2014, seeking for a direction to cause a sample to be taken and tested to ascertain the exact nature of the commodity transported by the petitioner and to direct the second respondent to finalise the adjudication proceedings within a specified time. An interim order was passed by this Court on 09.05.2014 to cause the sample to be taken and tested within the time as specified.

2. A copy of the test report has been produced as Ext.P3 in WP(C) No.4401 of 2015, which has been filed by the petitioner for causing the matter to be finalised, enabling the petitioner to have the offence compounded in terms of Rule 60A of the Rules, since the commodity transported by the petitioner has proven to

be ordinary sand and not river sand.

3. Heard the learned Government Pleader as well.

4. As disclosed from Ext.P3 report given by the Senior Chemist (H.G.) of the Chemical Lab, attached to the Office of the Directorate of Mining and Geology, it is stated that the concerned commodity transported in the vehicle bearing No.KL-8-AL-251 was ordinary sand.

5. The learned counsel for the petitioner submits that the petitioner might be permitted to compound the offence. It is settled law that, once the offence is compounded, no prosecution proceedings will lie in view of the ruling rendered by this Court as reported in 2013 (**2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**).

6. After hearing both the sides, the petitioner is set at liberty to compound the offence in view of the enabling provision, particularly under Section 23A of the Act and Rule 60A of the Rules.

7. Coming to the extent of amount to be satisfied as compounding fee, 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' itself by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the Act itself. The maximum fine in respect of such offence prescribed under the Act is stated as **Rs.25,000/-**. It was in the said circumstance, that this Court was passing orders enabling the party 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.

8. 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 first respondent to compound the offence, if the petitioner satisfies a sum of **Rs.25,000/-**. 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.

Both the Writ Petitions stand disposed of accordingly.

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

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

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