

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 24TH DAY OF APRIL 2015/4TH VAISAKHA, 1937

WP(C).No. 12879 of 2015 (H)

PETITIONER(S) :

1. AKHIL K.RAVEENDRAN AGED 26 YEARS
S/O.RAVEENDRAN, KANISSERY HOUSE, KURICHILAKODE
KOOVAPPADY, PERUMBAVOOR, ERNAKULAM

2. ISSAC MATHAI,
S/O.MATHAI, THANDIKAYIL HOUSE, KADAYIRIPPU P.O
KOLENCHERY, PERUMBAVOOR, ERNAKULAM.

3. FRANCIS RAPPEL,
S/O.RAPPEL, APPACHIRA HOUSE, KEERAMPARA P.O
KOTHAMANGALAM, ERNAKULAM

4. VINOD JOHN,
S/O.JOHN, PULICKAKANDATHIL HOUSE, KUNINJI P.O
PURAPUZHA, THODUPUZHA, IDUKKI

BY ADVS.SRI.T.A.UNNIKRISHNAN
SRI.K.S.PRAVEEN

RESPONDENT(S) :

THE SUB INSPECTOR OF POLICE
KOTHAMANGALAM POLICE STATION
ERNAKULAM DISTRICT.PIN 686 666

BY GOVERNMENT PLEADER SRI.VINCENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12879 of 2015 (H)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHBIIT P1 TRUE COP[Y OF THE REGISTRATION CERTIFICATE OF THE TIPPER
LORRY BEARING REG.NO KL-06-E-1705
EXHBITI P2 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE EXCAVATOR
BEARING REG.NO KL-17-C 7600
EXHBITI P3 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE TIPPER
LORRY BEARING REG.NO.KL-41-A-4551
EXHIBIT P4 TRUE COPY OF THE INSURANCE CERTIFICATE OF THE VEHICLE
BEARING REG.NO.KL-36-3324
EXHIBIT P5 TRUE COPY OF THE SEIZURE MAHAZAR DARED 16/4/2015 PREPARED
BY THE RESPONDENT
EXHBIIT P6 TRUE COPY OF THE JUDGMENT DATED 4/3/2015 IN WP(C) NO
6775/2015 OF THIS HON'BLE COURT

RESPONDENT(S) ' EXHIBITS

nil

/TRUE COPY/

PS TO JUDGE

ANIL K.NARENDHAN, J

W.P(C).No. 12879 of 2015

Dated this the 24th April, 2015

JUDGMENT

First petitioner is the owner of the tipper lorry bearing Reg. No. KL-06-E-1705. Second petitioner is the owner of Excavator bearing registration No.KL-17-C-7600. The third petitioner is the owner of tipper lorry bearing registration No.KL-41-A-4551. The fourth petitioner is the owner of tipper lorry bearing registration No.KL-36-3324, which were seized by the respondent, alleging illegal transportation of 'ordinary earth'. The case of the petitioners is that the petitioners have not used the vehicles in contravention of any provisions of the 'MMDR Act, 1957'/Kerala Minerals (Prevention of Illegal Mining and Storage and Transportation) Rules, 2015, or the Kerala Conservation of Paddy land and Wet Land Act (Act 28 of 2008). The learned counsel for the petitioners submits that the vehicles were being used to transport ordinary earth covered by valid permit/P Form.

2. Heard the learned counsel for the petitioners and also the learned Government Pleader.

3. The learned Government Pleader submitted that the vehicles were seized for illegal transportation of ordinary sand and that the offence involved is one under the MMDR Act/Kerala Minerals (Prevention of Illegal Mining and Storage and Transportation) Rules, 2015. He has pointed out that no offence under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 is involved.

4. The learned counsel for the petitioners submitted that the petitioners are ready to compound the offence.

5. Section 23A of the Act and the relevant Rules enable the party to have the offence compounded. The question whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act 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. The directions given as per the above verdict are extracted below :

“i) In cases where compounding applications have been acted upon as per the interim orders

passed by this Court and the offences have been compounded and compounding fees have been collected and vehicles have been released, it is declared that no further proceedings can be taken for confiscation of the vehicles;

- ii) In cases where complaints have been filed before the Court but compounding applications have been entertained and offences have been compounded, appropriate applications will be filed before the Courts and the concerned Courts will pass appropriate orders in the matter with regard to the closure of the cases pending;*
- iii) In cases where compounding applications are yet to be filed by the parties concerned, it is open to them to file applications which will be dealt with by the officer concerned in accordance with law and they will be free to pass appropriate orders on it. If no applications are filed within a period of three weeks from today and if compounding is not being allowed, it is open to the concerned officers to complete the procedures as enjoined by law."*

6. After hearing both the sides, this Court finds that the petitioners are also entitled to have similar relief.

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' 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 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 petitioners 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 petitioners satisfy a sum of **Rs.25,000/-** in respect of each vehicle. It is ordered accordingly. On satisfaction of the compounding fee, the vehicles shall be released to the petitioners forthwith. It is made clear that once the offences alleged against the

petitioners are compounded, no prosecution proceedings shall be pursued against them.

The Writ Petition stands disposed of accordingly.

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

**ANIL K.NARENDRA
JUDGE**

vgs24/4/15