

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

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

WP(C) .No. 12988 of 2015 (W)

PETITIONER(S) :

VASUDEVAN AGED 43 YEARS
S/O. AYYAPPAN EZHUTHASSAN, THACHARUTHODI HOUSE
VILAYUR P.O., VILAYUR VILLAGE, PATTAMBI TALUK
PALAKKAD DISTRICT. (OWNER OF LORRY
BEARING REGISTRATION NO.KL-52/9299) .

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

DEPUTY TAHASILDAR (INSPECTION)
TALUK OFFICE, PATTAMBI, PALAKKAD DISTRICT-687 002.

BY GOVERNMENT PLEADER SRI.VINCENT K.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
24-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 12988 of 2015 (W)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 : COPY OF THE MAHAZAR DTD.4.4.2015 PREPARED BY THE RESPONDENT.

P2 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT DTD.8.4.2015 IN WPC
NO.11214 OF 2015.

RESPONDENT(S) ' EXHIBITS

NIL

/TRUE COPY/

PS TO JUDGE

ANIL K.NARENDRA, J

W.P(C).No.12988 of 2015

Dated this the 24th April, 2015

JUDGMENT

Petitioner is the owner of a lorry bearing Reg. No. KL-52-9299, which was seized by the respondent, alleging illegal transportation of 'ordinary earth'. The case of the petitioner is that the petitioner has not used the vehicle 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 petitioner submits that the vehicle was being used to transport ordinary earth covered by valid permit/P Form.

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

3. The learned Government Pleader submitted that the vehicle was 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 petitioner submitted that the petitioner is 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 petitioner is 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 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 satisfies a sum of **Rs.25,000/-** in respect of the vehicle. 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 offences alleged against the petitioner are compounded, no prosecution proceedings shall be pursued against him.

The Writ Petition stands 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.

**ANIL K.NARENDRA
JUDGE**

vgs25/4/15