IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 19361

WP(C).No. 15766 of 2013 (U)

PETITIONER(S):

K.P.SUNILKUMAR,
PROPRIETOR AND DEALER,
S.S. MOTORS, S.S. TOWER,
KIZHUTHALLY, P.O. THAZHE CHOUVA, KANNUR,
PIN - 670 002.

BY ADVS.SRI.C.VATHSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA V.

RESPONDENT(S):
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, TRANSPORT DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695 001.

2. THE DEPUTY TRANSPORT COMMISSIONER,
(MOTOR VEHICLE), CIVIL STATION, CALICUT,
PIN - 673 001.

3. REGIONAL TRANSPORT OFFICER,
OFFICE OF THE REGIONAL TRANSPORT OFFICE,
CIVIL STATION, KANNUR.

BY GOVERNMENT PLEADER SRI.T.J.MICHAEL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1. COPY OF THE NOTICE DATED 8.11.2012 BY THE 3RD RESPONDENT.

EXHIBIT P2. COPY OF THE LIST OF VEHICLE ISSUED BY 3RD RESPONDENT ALONG WITH EXHIBIT P1.

EXHIBIT P3. COPY OF THE OBJECTION FILED BY THE PETITIONER.

EXHIBIT P4. COPY OF THE JUDGMENT IN WPC NO.27535/2012.

EXHIBIT P5. COPY OF THE NOTICE DATED 23.5.2013 BY 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

K. Vinod Chandran, J.

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W.P.(C)No.15766 of 2013

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Dated this the 6th day of January, 2015.

JUDGMENT

1. Petitioner is aggrieved with Ext.P1 notice issued to him by the third respondent. Though Ext.P1 is styled as a notice, it is in fact an order imposing a compunding fee of Rs.3,74,000/- on the petitioner, admittedly, a dealer in motor cycles, for reason of carrying on the dealership, without a valid trade certificate.

2. The petitioner was running a dealership of Royal Enfield (Bullet) motor cycles. Petitioner also was in possession of three trade certificates for transporting the vehicles sold, for registration. Petitioner failed to renew the trade certificates after the same expired on 17.9.2011. The omission was detected only on 11.10.2012, when the petitioner made an application for renewal of trade certificate. It was only on such renewal application

being filed that the authorities too noticed the expiry and the renewal, having not been effected. The petitioner had carried on the business of sale of motor cycles even after the expiry of trade certificate, which led to the impugned order being issued.

3. Section 39 of the Motor Vehicles Act, 1988 (hereinafter referred to as the "Act", for short) prohibits any motor cycle to be driven in a public place or on any other place, unless there is a display of the registration mark in the prescribed manner, obtained on the registration of the vehicle in accordance with Chapter IV. The proviso to the said section exempts dealers in motor vehicles from the rigor of the said prohibition, however on conditions prescribed by the Central Government.

4. Rule 33 of the Central Motor Vehicles Rules, 1989 provides for issuance of trade certificate to dealers for use of motor vehicles in public place as exempted under Section 39. A trade certificate

issued to a dealer is valid for one year and the registration mark in such certificate can be used only on one vehicle at a time. This facilitates the registration of the vehicles and the use of the vehicle on public roads, pursuant to the sale effected by the dealer.

5. A sale effected or a dealership carried on, without obtaining the said trade certificate would invite a penalty under Section 192 (1) of the Act. Section 177 is a general provision, wherein contravention of any provision of the Act or of any Rule, Regulation or Notification made therein shall be punishable with Rs.100/- for the first offence and Rs.200/- for all subsequent offences. The said provision would be applicable only where no specific punishment is provided for an offence. Section 192(1) provides for a maximum fine of Rs.5,000/- for driving or causing or allowing a vehicle to be used in contravention of the

provisions of Section 39. Hence, if the vehicles have been used in a public place in contravention of the provision of Section 39, either without a registration mark or without a trade certificate, then, necessarily, the said offence would be attracted.

6. The penalty under Section 192(1), however, has to be imposed in a proceeding under the provisions of the Code of Criminal Procedure and the offence would be cognizable by a court constituted under the Code. The departmental authorities have not been conferred with the power to impose such penalty. The proviso to sub section (1) of Section 192 also specifically provides that the court taking cognizance of a complaint, for reasons to be recorded, is competent to impose a lesser punishment.

7. The respondents, however, seek to sustain Ext.P1, relying on Section 200 relating to compounding of offences and also a

notification issued in pursuance to sub section (1) of Section 200, which has been handed over across the Bar bearing G.O.(P) No.14/2010/Tran. Dated 2.3.2010. Any offence committed under sub-section (1) of Section 192 is compoundable at the rate of Rs.2,000/- for each offence as per the notification. Ext.P1 has been passed on the premise that the petitioner, after the expiry of the trade certificate, has dealt in 187 vehicles.

8. Compounding of offence provided under the statute is by way of exoneration from the rigor of prosecution proceedings wherein, necessarily, the alleged offender would have to be given an option before an order is passed. There is no mandate, going by the provision under Section 200, that a person, who has been issued with the order, without the option being exercised, has to pay the amount. In that event, the same would be deemed to be a penalty imposed on the offender which the departmental

authorities cannot do.

9. Penalty can be imposed only if a prosecution is initiated and the court taking cognizance of the complaint, after adjudication, decides on the penalty to be imposed. The fixation of the quantum of penalty, even going by the proviso to sub section (1) of Section 192, is within the exclusive jurisdiction of the court, which takes cognizance of the complaint. However, on an option being exercised by an alleged offender, definitely, the rigor of prosecution could be avoided by payment of the amounts as notified under sub section (1) of Section 200.

10. Admittedly, there is no notice issued to the petitioner for prosecution. An option can be called for to compound the offence and if not responded to, there can only be a prosecution launched. There cannot be any order of compounding which stands alone, as a penalty, without a prosecution being initiated.

When a compounding offered by a department is refused to be opted, by an alleged offender, the Department would only have an option to proceed against the alleged offender for imposition of penalty as per the penal provisions of the Act read with the Code of Criminal Procedure. In such circumstances, Ext.P1 is unsustainable insofar as it directs payment of compounding fee for consideration of the renewal of trade certificate application.

11. It is also to be noticed that no such levy can be imposed on an applicant when renewal is sought for under the Rules, which has to be considered independent of any offence, but, however subject to the rigor placed on the continuation of a trade certificate as per Rule 44 of the Central Motor Vehicles Rules.

12. In such circumstances, Ext.P5, which directs payments of the amounts demanded in Ext.P1, on failure of which, recovery is threatened, would stand set aside. Obviously, the petitioner has

been granted renewal of trade certificate on the strength of the interim order, which also need not be interfered with by this Court, since, no prosecution is said to have been filed against the alleged offence. However, Ext.P1 would be treated as a notice offering the provision of compounding and if not complied with, the department would be left with the option of proceeding for prosecution. Epecially since the petitioner had all along a stay in the matter, the limitation for initiation of prosecution under the provisions of the Code of Criminal Procedure would commence from the date of issuance of certified copy of this judgment.

Writ petition allowed with the above rider. No costs.

K. Vinod Chandran, Judge.

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