IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 19539 of 2014 (N)

PETITIONER:

SIDDIQUE, S/O.KOYA, AGED 38 YEARS,
THAZHATHETHIL HOUSE,
PADINJARANGADI P.O., PATTITHARA VILLAGE,
PATTAMBI TALUK, PALAKKAD DISTRICT.
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-57-A-2583)

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT:

THE VILLAGE OFFICER,
PONNANI NAGARAM VILLAGE,
MALAPPURAM DISTRICT-676 585.

BY SENIOR GOVT. PLEADER SMT.ANITHA RAVINDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 19539 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 - **TRUE COPY OF THE SEIZURE MAHASSAR DATED 25-7-2014 PREPARED BY THE RESPONDENT.**

EXT.P2 - **TRUE COPY OF THE GO(MS)NO.20/14/ID DATED 12-2-2014 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIAL DEPARTMENT, GOVERNMENT OF KERALA.**

EXT.P3 - **TRUE COPY OF THE INTERIM ORDER DATED 7-4-2014 IN WPC NO.8183 OF 2014 OF THIS HONOURABLE COURT.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY

P.S. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

==========

W.P.(C) No.19539 of 2014

==========

Dated this the 8th day of April, 2015

JUDGMENT

The issue projected in this writ petition is with regard to the power and competence of the **respondent** to have effected seizure of the vehicle belonging to the petitioner bearing registration No.**KL-57-A-2583** allegedly for transporting ordinary earth in contravention to the provisions under the 'MMDR Act, 1957'/'KMMC Rules (for short, 'Act/Rule').

2. The petitioner seeks to place reliance on G.O.(Ms) No. 20/14/ID dated 12.02.2014 issued by the Government, whereby the competent authorities/officers have been notified, also mentioning the area of jurisdiction within which they can exercise their power in connection with the offences under the relevant provisions of the Act/Rules. In the said Government Order, the respondent who has effected seizure

in the instant case is not mentioned and as such, the proceedings are stated as *per se* wrong and illegal in all respects; thus seeking for a relief to have the vehicle released to the petitioner unconditionally.

3. Heard the learned Government Pleader as well.

4. When the matter came up for consideration before this Court earlier, an interim order was passed granting interim custody of the vehicle to the petitioner, on satisfying a sum of Rs.25,000/- subject to further orders to be passed in the writ petition. It is stated that, pursuant to the said order, the petitioner satisfied the said amount and got interim custody of the vehicle. Today, when the matter is taken up for further consideration, it is pointed out by the learned Government Pleader that the G.O dated 12.02.2014 sought to be relied on by the petitioner came to be issued under a mistake, and that the same is being corrected by issuing a proper G.O, draft of which is placed for perusal of this Court. This Court does not intend to express any

opinion with regard to the same. The power, jurisdiction and authority vested with the authorities of Revenue, Police and the Department of Geology have already been dealt with by this Court as per the decision reported in **Aloshias C Antony v Government of Kerala (2014(1) KLT 538);** whereby the course and proceedings pursued by the concerned officers intercepting the vehicle in respect of the concerned offence was upheld. It was thereafter, that notification was issued by the Government as borne by the aforesaid G.O dated 12.02.2014. The said G.O does not make a reference to the verdict already passed by this Court. Under what circumstance was the said G.O issued, is not discernible. However, in view of the submission made by the learned Government Pleader that, necessary steps are being pursued to have it corrected and to issue a proper G.O, this Court does not venture into any further exercise.

5. The remaining question to be considered is as to the further course of action. Even if it is accepted that the

concerned respondent, who has seized the vehicle did not have the power or competence as per the notification (copy of which has been produced along with the writ petition) is accepted as correct.; that by itself will not vitiate the entire proceedings, if an offence is made out. It is relevant to note that, the petitioner, while contending that the seizure was illegal, has not specifically pleaded or substantiated that the material which was being transported in the vehicle was on the strength of any valid pass and no copy of such pass is produced. This Court finds that, even if the seizure by the concerned officer was not proper, nothing prevents the **competent authority**, who is actually vested with the power as per statute and also as notified by the Government to file necessary proceedings before the Judicial Magistrate's Court having jurisdiction over the area, in respect of the offence, if any.

6. Just to illustrate the position, a peep into the mandate of Section 27 of the Indian Evidence Act will be

helpful. The recovery under Section 27 of the Evidence Act, on the basis of the information given by the accused, who is in custody of a police officer, is very important in a criminal case. It is settled law that, merely for the reason that Section 27 recovery is bad, the same by itself will not vitiate the prosecution. Section 27 recovery is only one of the different links in the chain, to take the proceedings to a logical conclusion. The seizure in the instant case stands on a much lower pedestal and even if the seizure herein is bad, that by itself cannot give a green card to the petitioner to contend that no offence will lie. If any offence is involved, it is of course liable to be investigated by the concerned authority and proceeded with by the concerned Magistrate having jurisdiction over the area.

7. In the above circumstance, this Court finds that the seizure effected by the concerned respondent herein has to be reported to the competent officer/authority as per the Act/Rules within 'two weeks' from the date of receipt of a

copy of this judgment; upon which it is for the competent authority to file appropriate proceedings before the concerned Judicial Magistrate's Court having jurisdiction, so as to prosecute the matter, if any offence is involved. This of course is subject to the rider that, if the petitioner opts, it is always open for him to have the offence compounded, by virtue of enabling provisions under Section 23A of the 'MMDR Act' and the relevant rule under the 'KMMC Rules'.

8. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/KMMC Rules 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."

After hearing both the sides, this Court finds that the petitioner is also entitled to have similar relief.

9. 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 incorporation of Section 4(1A), for which separate penalty is provided under the 'Act'. Since the said offence is also liable to be punished with **'imprisonment',** the ceiling on fine is not applicable. It was in the said circumstance, that this Court has been passing orders enabling the parties 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; to have a uniform pattern and result.

10. In the above facts and circumstances, if the petitioner expresses willingness to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the competent authority to compound the offence, if the petitioner satisfies/has satisfied a sum of

Rs. 25,000/-. It is ordered accordingly. It is made clear that the amount if any deposited by the petitioner, pursuant to the interim order passed by this Court, shall be given credit to and the offence shall be treated as compounded. Once the offence is compounded, no prosecution proceedings will lie against the petitioner, in view of the law declared by this Court as per the decision reported in ***2013 (1) KLT 600 (Digil v. Sub Inspector of Police)***

The writ petition is disposed of accordingly. The petitioner shall produce a copy of this judgment along with a copy of this writ petition before the concerned respondent/competent authority for further steps.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

vdv