

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WP(C).No. 21908 of 2014 (K)

PETITIONER :

**JAYESH
S/O.VISWAMBARAN, AGED 31 YEARS
MATHAKKARATHARAYIL HOUSE
KULASEKHARAMANGALAM P.O.
KULASEKHARAMANGALAM VILLAGE, VAIKOM TALUK
KOTTAYAM DISTRICT
(OWNER OF LORRY BEARING REGISTRATION NO.KL-36-3986).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT :

**THE SUB INSPECTOR OF POLICE
MULANTHURUTHY POLICE STATION, ERNAKULAM DISTRICT
PIN-682 301.**

BY SR. GOVT. PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.21908 of 2014

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Dated this the 14th day of January, 2015

JUDGMENT

Petitioner is the owner of the vehicle bearing Reg. No. **KL-36-3986**, which was intercepted by the respondent while transporting 'Ordinary earth' on 20.08.2014 alleging violation of the relevant provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967. According to the petitioner, since the ordinary earth was being transported for his own purpose, no P form is necessary. It is in the said circumstances that the declaration is also sought for .

2. Heard the learned Government Pleader as well.

3. Absolutely no material has been filed by the petitioner before this Court but for Ext.P1 Seizure Mahazar produced along with I.A.No.11458/2014. Even if the petitioner is not a dealer or purchaser and has transported ordinary earth for his own purpose in view of the clear mandate under the Act/Rules, particularly under Section 4(1A) of the MMDR Act and Rule 48K of KMMC Rules, 1967, nobody shall transport minor mineral

without a valid cash memorandum. The fact that ordinary earth is a minor mineral is evident from the definition of the term minor mineral under Section 3(e) of the Act and also notification issued by the Central Government as early as in the year 2000. The position stands declared by this court as well, as per decision **Alloshias C Antony v Chief Secretary, Government of Kerala** (2014 (1) KLT 536). This being the position, this Court finds it difficult to accept the proposition made by the petitioner in so far as the petitioner admits that there was no document in support of the transportation, offence under the Act/Rules is made out. But by virtue of the enabling provision under the statute, it is always open for the petitioner to have the opportunity of compounding the offence.

4. Section 23A of the 'MMDR Act' and Rule 60A of the 'KMMC Rules' enable the party to have the offence compounded. The question whether prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions of the MMDR Act/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.

5. 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 has passed 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.

6. It is also brought to the notice of this Court that when the matter came up for admission on 21.08.2014, the interim custody of the vehicle has already been released on payment of a sum of Rs.25,000/- . If the petitioner is desirous of compounding

the offence, it is open for the petitioner to file an application before respondent in this regard, upon which the same shall be considered and appropriate orders shall be passed in terms of the relevant provisions of law, also considering the amount already satisfied by the petitioner pursuant to the interim order dated 21.08.2014. If once the offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

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 for further steps.

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

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