

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 28766 of 2013 (U)

PETITIONER:

**BINU, AGED 36 YEARS,
S/O.UTHUMAN, INDU BHAVAN, MEENADU,
CHATHANNOOR, KOLLAM DISRTRICT.**

BY ADV. SRI.C.RAJENDRAN

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE CITY POLICE COMMISSIONER,
KOLLAM CITY, KOLLAM - 691 001.**
- 3. THE ASSISTANT POLICE COMMISSIONER,
CHATHANNUR POLICE STATION, KOLLAM - 691 572.**
- 4. THE CIRCLE INSPECTOR OF POLICE,
PARAVOOR CIRCLE, KOLLAM - 691 301.**
- 5. SUB INSPECTOR OF POLICE,
PARIPPILLY POLICE STATION, KOLLAM - 691 574.**
- 6. THE SUB INSPECTOR OF POLICE,
PARAVOOR POLICE STATION, KOLLAM - 691 301.**

BY GOVERNMENT PLEADER SRI.MUHAMMED SHAFI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- EXT.P1 : A TRUE PHOTOCOPY OF THE PERMIT ISSUED BY THE GEOLOGIST,KOLLAM DATED 22.7.2013.
- EXT.P2 : A TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE GEOLOGIST DATED 30.10.2013.
- EXT.P3 : A TRUE PHOTOCOPY OF THE PROCEEDINGS OF THE GEOLOGIST DATED 13.11.2013.
- EXT.P4 : A TRUE PHOTOGRAPHS SHOWING THE PRESENCE OF THE POLICE AT 9:48 AM ON 16.11.2013 AT THE SIGHT.
- EXT.P4(A) : A TRUE PHOTOGRAPHS SHOWING THE PRESENCE OF THE POLICE AT 9:45 AM ON 16.11.2013 AT THE SIGHT.
- EXT.P4(B) : A TRUE PHOTOGRAPHS TAKEN AT 9:48 ON 16.11.2013 AT THE SIGHT.
- EXT.P4(C) : A TRUE PHOTOGRAPHS SHOWING THE PRESENCE OF THE POLICE AT 10.43 ON 16.11.2013 AT THE SIGHT.
- EXT.P4(D) : A TRUE PHOTOGRAPHS SHOWING THE QUARRIED EARTH AND THE LORRY AT 10.10 AM ON 16.11.2013 AT THE SIGHT.
- EXT.P4(E) : A TRUE PHOTOGRAPHS SHOWING THE LIE OF THE LORRY AT 12.08.46 PM ON 16.11.2013 AT THE SIGHT.
- EXT.P4(F) : A TRUE PHOTOGRAPHS SHOWING THE LIE OF THE JCB AT 12.08.50.
- EXT.P5 : A TRUE PHOTOCOPY OF THE PERMIT ISSUED BY THE GEOLOGIST DATED 15.11.2013.

RESPONDENT(S)' EXHIBITS:

- EXT.R5(A) : TRUE COPY OF THE FIR.
- EXT.R5(B) : TRUE COPY OF THE MAHAZER.

/TRUE COPY/

P.S. TO JUDGE

mbr/

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.28766 of 2013

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Dated this the 2nd day of March, 2015

JUDGMENT

The lorry bearing Registration No.KL-20C-4302 and JCB bearing No.KL-02-AQ-4903 were seized by the 4th respondent alleging offence under the MMDR Act/KMMC Rules. The main ground of challenge is that, the 4th respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the 4th respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing reliance on the judgment

rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala** [2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on **26.11.2013**, the vehicles were caused to be released, on execution of a simple bond. In the said circumstance, the further course of action required is to surrender the vehicles before the 4th respondent, so as to enable the 4th respondent to produce them before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The petitioner expresses desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioner to have it compounded on satisfying the compounding fee of ₹25,000/- within **two weeks** from the date of receipt of a copy of this judgment. Once the offence is compounded, no prosecution

proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013(1) KLT 600]. It shall be reported to the concerned Magistrate, if the crime has already been reported. If there is any failure in compounding the offence, the 4th respondent shall pursue further steps to seize the vehicles and proceed with steps for prosecution.

The writ petition is disposed of.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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