

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 29634 of 2013 (D)

PETITIONER :

**KISHORE BALAKRISHNAN
S/O.BALAKRISHNAN, AGED 39 YEARS
CHORAKUZHAYIL, PERUMBALUR P O
ARAKUZZHA VILLAGE, MUVATTUPUZHA TALUK
ERNAKULAM
(OWNER OF JCB BEARING REGISTRATION NUMBER KL-17-J-5950
TIPPER LORRIES BEARING REGISTRATION NOS. KL-25-D-6572
KL- 38 -A- 4581, KL-47-B-4082, KL-35-C-5773)**

**BY ADVS.SRI.P.M.ZIRAJ
SRI.A.M.ABDULLA**

RESPONDENTS :

- 1. THE ADDITIONAL SUB INSPECTOR OF POLICE
MUVATTUPUZHA POLICE STATION, ERNAKULAM DISTRICT
PIN-683 545.**
- 2. THE SUB INSPECTOR OF POLICE,
MUVATTUPUZHA POLICE STATION AND ANOTHER
ERNAKULAM DISTRICT, PIN-683 545.**

R1 & R2 BY GOVT. PLEADER SRI. M. MUHAMMED SHAFI

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

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...2/-

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1:- TRUE COPY OF THE REPORT SUBMITTED SUB INSPECTOR ATTACHED TO THE OFFICE OF THE DISTRICT POLICE CHIEF BEFORE THE 2ND RESPONDENT DTD. 28/11/2013.
- EXT. P2:- TRUE COPY OF THE REPORT OF THE FIRST RESPONDENT SUBMITTED BEFORE THE DISTRICT COLLECTOR, ERNAKULAM DATED 29-11-13.
- EXT. P3:- TRUE COPY OF THE PERMIT ISSUED BY THE DISTRICT GEOLOGIST, ERNAKULAM DTD. 21/11/2013.
- EXT. P4:- TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM DTD 11/10/2013.
- EXT. P5:- TRUE COPY OF THE BUILDING PERMIT DTD 24/4/2013 ISSUED BY THE SECRETARY, MUVATTUPUZHA MUNICIPALITY.
- EXT. P6:- TRUE COPY OF THE CASH MEMORANDUM DTD. 28/11/2013 ISSUED TO THE VEHICLE BEARING REGISTRATION NO.KL-25-D-6572.
- EXT. P7:- TRUE COPY OF THE CASH MEMORANDUM DTD 28/11/2013 ISSUED TO THE VEHICLE BEARING REGISTRATION NO. KL-38-A-4581.
- EXT. P8:- TRUE COPY OF THE CASH MEMORANDUM DTD 28/11/2013 ISSUED TO THE VEHICLE BEARING REGISTRATION NO. KL-47-B-4082.
- EXT. P9:- TRUE COPY OF THE CASH MEMORANDUM DTD 28/11/2013 ISSUED TO THE VEHICLE BEARING REGISTRATION NO KL-35-C-5773

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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P.R. RAMACHANDRA MENON J.

W.P.(C) No.29634 of 2013

Dated, this the 3rd day of March, 2015

JUDGMENT

The vehicles bearing Nos.**KL-17-J-5950, KL-25-D-6572, KL-38-A-4581, KL-47-B-4082** and **KL-35-C-5773** were seized by the **2nd respondent** alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the 2nd respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the 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 **5.12.2013**, the vehicles were caused to be released, **on satisfaction of a sum Rs.25,000/- for each vehicle** and **on execution of a simple bond**. In the said circumstance, the further course of action required is to surrender the vehicles before the concerned respondent, so as to enable the respondent to produce it 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 the offence compounded on satisfying the compounding fee of Rs.25,000/- for each vehicle. The amount ordered to be

paid as per the interim order dated **5.12.2013** shall be treated as compounding fee and offence shall be treated as compounded. 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 satisfying the compounding fee, the respondent shall pursue further steps in connection with the prosecution before the concerned Magistrate having jurisdiction over the area.

The writ petition is disposed of.

Sd/-

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

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