

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C).No. 35370 of 2014 (U)

PETITIONER :

**RAFEEK.K.Y., AGED 38 YEARS,
S/O.YOUSAF, KOORIYATTIL HOUSE, ERUMATHALA P.O.,
PENGATTUSERRY, ALUVA EAST VILLAGE, ERNAKULAM DISTRICT.
(OWNER OF LORRY BEARING REGISTRATION NUMBER KL-41-F-1846).**

BY ADV. SRI.G.SANTHOSH KUMAR (P).

RESPONDENTS :

- 1. THE DISTRICT COLLECTOR
ERNAKULAM DISTRICT, CIVIL STATION, KAKKANAD-682030.**
- 2. THE SUB INSPECTOR OF POLICE
ALUVA EAST POLICE STATION, ALUVA,
ERNAKULAM DISTRICT - PIN 683101.**

BY GOVERNMENT PLEADER SRI. K.C. VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-01-2015 ALONG WITH WPC 35386/2014 & CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT-P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF VEHICLE
NO.KL-41-F-1846.**

**EXHIBIT-P2: TRUE COPY OF THE PROCEEDINGS OF THE GEOLOGIST, DEPT. OF
MINES AND GEOLOGY, ERNAKULAM DATED 26.11.2014.**

**EXHIBIT-P3: TRUE COPY OF THE JUDGMENT DATED 26.05.2013 IN
W.P.(C) NO.12868 OF 2013.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

P.R. RAMACHANDRA MENON, J.

W.P.C. Nos.35370, 35386, 35388 & 35394 OF 2014

Dated this the 5th day of January, 2015

JUDGMENT

Petitioners are owners of the vehicles bearing Reg. Nos.KL-41-F-1846, KL-17-D-3163, KL-07-BG-3337 and KL-40-A-3653 respectively, which were seized by the second respondent alleging illegal transportation of 'Ordinary earth'. The case of the petitioners is that the petitioners have not used the vehicles in contravention of any provisions of the 'MMDR Act, 1957'/'KMMC Rules, 1967, or the Kerala Conservation of Paddy land and Wet Land Act (Act 28 of 2008). The learned counsel for the petitioners submits that the vehicles were being used to transport 'Ordinary earth' covered by valid permit/P Form.

2. The learned counsel for the petitioners submits that, the offence involved, if at all any, is only under the MMDR Act/KMMC Rules and that no offence under the 'Sand Act' or Act 28 of 2008 or any other enactment is involved. It is stated that the petitioners are entitled to compound the offence and

that they are ready to compound the same. A copy of the Mahazar obtained by the petitioners is placed for consideration.

3. Heard the learned Government Pleader as well, who submits that, the offence involved is under the MMDR Act/ KMMC Rules and that no offence under the Kerala Conservation of Paddy Land and Wet Land Act, 2008 or 'Sand Act' is also involved.

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

6. In view of the willingness expressed from the part of the petitioners to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the second respondent to compound the offence, if the petitioners satisfy a sum of **Rs. 25,000/-** each. It is ordered accordingly. On satisfaction of the compounding fee, the vehicles shall be released to the petitioners forthwith. It is made clear that once

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the offence alleged against the petitioners is compounded, no prosecution proceedings shall be pursued against them.

All the Writ Petitions are disposed of accordingly.

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

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