

(2015) 01 KL CK 0213

In the High Court Of Kerala

Case No : Writ Petition (C). No. 826 of 2015 (C)

Anil Kumar P.K.

APPELLANT

Vs

The District Collector, Alappuzha and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Citation : (2015) 01 KL CK 0213

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : P.V. Dileep, for the Appellant; K.C. Vincent, Senior Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J—The petitioner is the owner of a JCB bearing registration No. KL-03-U-1749, which was seized by the 3rd respondent alleging violation of permit conditions and also alleging offence under Section 4(1) and 21 of the Kerala Minor Mineral (Regulation of Development) Act, 1957. The learned counsel for the petitioner submits that the petitioner is having a valid permit issued by the 4th respondent as borne by Ext. P2 and it was during the currency of the said permit that the vehicle was taken in to custody as per Ext. P1 mahazar dated 05.01.2014.

2. The learned Government Pleader appearing for the respondents submits that, as per the permit, particularly by virtue of Clause 6 of Ext. P2, the petitioner was never permitted to have any excavation whereas, the JCB belonging to the petitioner was deployed for effecting excavation at the time of seizure effected as per Ext. P1 on 05.01.2015. This being the position, clear violation of the permit condition is made out and the petitioner is liable to be proceeded against, submits the learned Government Pleader. The learned counsel for the petitioner submits that the petitioner is ready to compound the offence.

3. 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 *Digil Vs. Sub Inspector of Police*, (2013) 1 KLT 600, 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.

4. 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 party 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.

5. In view of the willingness expressed from the part of the petitioner to have the offence compounded, conceding the guilt, this Court finds it fit and proper to direct the respondent to compound the offence, if the petitioner satisfies a sum of Rs. 25,000/-. It is ordered accordingly. On satisfaction of the compounding fee, the vehicle shall be released to the petitioner forthwith. It is made clear that once the offence alleged against the petitioner is compounded, no prosecution proceedings shall be pursued against him.

The Writ Petition stands 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.