

(2015) 01 KL CK 0023

In the High Court Of Kerala

Case No : Writ Petition(C). No. 104 of 2015 (K)

Biju R.

APPELLANT

Vs

The Village Officer

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 23A, 4(1A)

Citation : (2015) 01 KL CK 0023

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

Bench : Single Bench

Advocate : Shoby K. Francis, for the Appellant; K.C. Vincent, Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.R. Ramachandra Menon, J.—The petitioner, who is the owner of the vehicle bearing No. KL.09/Y-5356, is aggrieved of the seizure of the vehicle on 29.12.2014, alleging illegal transportation of M-sand. The petitioner is questioning the authority of the respondent/Village Officer, who seized the vehicle.

2. The learned Government Pleader points out that the authority of the respondent/Village Officer to seize the vehicle, with reference to the relevant provisions of the MMDR Act/KMMC Rules had already come up for consideration before this Court and as per the judgment reported in Alosias C. Antony Vs. Chief Secretary, Government of Kerala and Others, the position has been answered against the persons like petitioner. The learned Counsel for the petitioner submits that the petitioner is ready to compound the offence and that an opportunity might be given to get the vehicle released after satisfying the compounding fee.

3. The issue involved in this case is, whether the petitioner, who has been proceeded against in respect of the offences under the Mines and Mineral

(Development and Regulation) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 is entitled to have the offence compounded in view of the desire expressed from his side in this regard.

4. Heard the learned Government Pleader as well.

5. Section 23A of the "Act" and Rule 60A of the Rules enable the parties to have the offence compounded. 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 been passing various orders in similar matters enabling the concerned parties to have the interim custody of the vehicle on satisfaction of a sum of Rs. 25,000/- and also by directing the concerned respondent to consider the application for compounding, if any.

6. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions. This issue has already been considered and decided by this Court in Digil Vs. Sub Inspector of Police, holding that, once the offence is compounded, there cannot be any further prosecution proceedings.

7. In view of the law declared as mentioned herein before, there will be a direction to the concerned respondent to accept the application to be filed by the petitioner to compound the offence; which shall be considered and appropriate orders shall be passed forthwith, subject to satisfaction of a sum of Rs. 25000/- as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

The writ petition is disposed of.