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**(2013) 01 KL CK 0027**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) No. 24494 of 2012 and Connected Cases

Digil

APPELLANT

Vs

Sub Inspector of Police

RESPONDENT

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**Date of Decision :** 09-01-2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 167, 173(2), 198, 199, 2(d)  
Kerala Forest Act, 1961 — Section 52, 52(2), 61A, 67, 68  
Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 —  
Section 23, 24, 25  
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 21,  
21(4A), 22, 23A  
Motor Vehicles Act, 1988 — Section 86(5)  
Transplantation of Human Organs and Tissues Act, 1994 — Section 13(3)(iv), 22

**Citation :** (2013) 1 KLT 600

**Hon'ble Judges :** T.R. Ramachandran Nair, J

**Bench :** Single Bench

**Advocate :** P.M. Ziraj, Babu S. Nair and T.P. Pradeep, for the Appellant; P.A. Muhammed Shah, Government Pleader, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

T.R. Ramachandran Nair, J.—These Writ Petitions have been filed by the respective petitioners mainly seeking for a direction to the respondents in the Writ Petitions to receive and consider the request for compounding the offence alleged by invoking the powers conferred under R. 60(A)(1) of the Kerala Miner Mineral Concession Rules, 1967 (for short "the Rules") and the relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Central Act"). The vehicles have been seized for violation of the provisions of the Central Act and Kerala Rules. S. 23A of the Central Act provides for compounding of offences and similarly R. 60A of the Rules also provides for compounding of the offences.

2. Interim orders have been passed by this Court in various Writ Petitions

directing the Police officers to accept the applications for compounding and pass appropriate orders.

3. The matter was heard in detail in the light of the stand taken by the learned Government Pleader that even if the offence is compounded, there is no legal bar in proceeding with the steps for confiscation of the vehicles involved.

4. Heard learned counsel for the petitioners, Shri Babu S. Nair, Shri P.M. Ziraj and Shri T.P. Pradeep and learned Government Pleader Shri P.A. Muhammed Shah.

5. Before going into the respective contentions, I will advert to the contentions raised in the counter affidavit filed in W.P. (C) No. 24494/2012. The contention mainly raised is that the prosecution against the offender and confiscation of a vehicle are two separate proceedings and have been separately dealt with in the Act and the Rules. S. 23A(2) of the Act and R. 60A of the Rules are concerned with the offender only and the equipment, tool and the vehicle seized have to be dealt with only in accordance with S. 21(4A) of the Act. By compounding the offence, the prosecution proceedings initiated against the offender only gets terminated but the confiscation of the vehicle which is engaged in illegal transportation of a mineral subsists and therefore by compounding an offence, the vehicle which is seized, cannot be released.

6. Reference may have to be made to the relevant provisions of the Central Act and the Rules. S. 21 of the Act provides for penalties. Sub-sections (1), (4), (4A) and (5) are relevant for the purpose of this case and they read as follows:

(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both;

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf;

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court;

(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

The next important section is S. 22 concerning cognizance of offences which reads as follows:

22. Cognizance of offences.--No court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government.

Therefore, a written complaint by an authorised person is necessary for taking cognizance of any offence by the court. Compounding of offences is provided under S. 23A which reads as follows:

23A. Compounding of offences.

(1) Any offence punishable under this Act or any rule made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised u/s 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence.

(2) Where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

The above provisions will give an idea regarding the scheme under the Central Act.

7. The crux of the argument raised by the learned counsel for the petitioners is by relying upon sub-section (2) of S. 23A providing that "where an offence is compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded". It is therefore submitted that once the offence is compounded, the criminal court cannot proceed to pass any order of confiscation. The complaint itself contemplated under S. 22, cannot therefore be proceeded with after the offence is compounded. It is submitted that going by sub-section (4A) of S. 21, the court alone is given power to pass an order of confiscation and if it is read with S. 22, it can be seen that written complaint is a pre condition for taking cognizance of offence and to proceed with the matter and when the offence is compounded, nothing will survive, as the case will have to be closed.

8. The scheme under the relevant rules is also of similar nature. R. 58 is concerned with penalties and the same is extracted below:

58. Penalties.

(1) Whoever contravenes any provision of these rules shall be punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to five thousand rupees or with both and in the case of continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) Whenever any person raises, without any lawful authority any minor mineral from any land, the State Government may recover from such person the mineral so raised or, where such mineral has already been disposed of, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority:

Provided that in case of Government land seigniorage shall be realized in addition to the royalty.

Provided further that in the case of those who opted for Consolidated Royalty Payment System exceeds the permitted extent of land shall pay the next higher slab of royalty in addition to the amount already paid.

(3) Whenever any person raises, without any lawful authority any minor minerals from any land, and for that purpose, brings on the land, any tool, equipment, vehicle or any other things, such mineral, tool, equipment, vehicle or other thing shall be liable to be seized by an officer or authority specifically empowered in this behalf by the Government.

(4) Illegal transport of minor minerals without any valid permit issued by a competent authority is liable for seizure of the minor mineral along with the transport vehicle, equipment and tools and the owner and/or the driver shall be liable for punishment under Rule 58, irrespective of the place from where the minor minerals have been raised.

Herein, one thing to be noticed is that, there is no enabling provision prescribing any procedure regarding confiscation similar to S. 21(4A) of the Central Act R. 59 deals with cognizance of offence which is similar to S. 22 of the Central Act and the same reads as follows:

59. Cognizance of offence.-- No Court shall take cognizance of any offence punishable under these rules, except upon complaint in writing made by a person authorised in this behalf by the State Government or the competent authority. The name or the designation of such person shall be published in the Gazette

Compounding of offences is provided under R. 60A which reads as follows:

60A. Compounding of offences.

(1) Any offence punishable under these rules may, either before or after the institution of the prosecution be compounded by the person authorised under rule 59 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government of such sum as that person

may specify;

(2) Where an offence is compounded under sub-rule (1) no proceeding or further proceeding as the case may be, shall be taken against the offender in respect of the offence so compounded and the offender if in custody, shall be released forthwith.

Sub-rule (2) is quite important and is worded similarly to that of the provision under the Central Act, viz., S. 23A(2). Of course, under sub-section (5) of S. 21 as well as sub-rule (2) of R. 58, power is given to the State Government to recover the mineral or various amounts towards royalty or tax or rent as the case may be.

9. Learned counsel for the petitioners relied upon the following judgments of this Court: Sivapalan Vs. R.T.O., , Baiju v. State of Kerala ( 2007 (4) KLT 1082), Mathew. N.J. Vs. The State of Kerala and Others, , to contend for the position that once the offences are compounded, no further action can be maintained. They also relied upon the decisions in Moosakoya Vs. State of Kerala, , Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation, and Abdul Azeez Vs. State of Kerala, which has been affirmed by a Division Bench in Ismayil Vs. State of Kerala, to contend for the position that court can take cognizance only based on a written complaint.

10. The effect of compounding of offences on any further proceedings was considered by this Court in Sivapalan Vs. R.T.O., . Therein, a stage carriage which was having a regular permit in a particular route, was carrying a marriage party on the date of inspection and a charge memo was issued with an option to compound the offence under S. 86(5) of the Motor Vehicles Act. 1988. After the offence was compounded, another letter was issued to the petitioner to remit tax at contract carriage rate for the said quarter which was under challenge before this Court in a Writ Petition. This Court, in para 3 of the judgment, has held as follows:

...Petitioner, having been permitted to compound the offence, I do not think that the respondent will be justified in proceeding against him by Ext. P2 directing him to remit the tax at contract carriage rate due for the quarter ending 31.9.1992. Compounding is generally by way of compromise or agreement and once an offence is compounded, the composition has the same effect in a criminal trial as it would have in the case of a compromise in a Civil Suit. The effect of composition is that it precludes the authority who initially agreed for it from initiating any fresh proceedings against the offender as composition operates as a complete bar to any further proceedings as if the offender had been acquitted.

The learned Judge was of the view, therefore, that the effect of compounding precludes the authority from initiating any proceedings against the offender and the composition operates as a complete bar to any further proceedings as if the offender had been acquitted.

11. The meaning of the word "compound" was considered in detail by another learned Single Judge in Baiju's case (2007 (4) KLT 1082). The issue therein arose under S. 320 of the Code of Criminal Procedure. The question was considered in the light of the contention whether a joint application is required. In para 7, the meaning of the word "compound" was examined and the principles have been laid down thus:

7. What is meant by the word "compound" ? Is it different and if so, how different it is from the other processes like compromise, settlement, withdrawal etc. It will be apposite straight away to refer to the dictionary. The dictionary gives interesting development of the concept of the expression "compound". I extract below the meaning of the word in the New Oxford Dictionary of English. As a verb transitive, inter alia, it has meanings, which alone are relevant for our purpose.

"2. make (something bad) worse; intensify the negative aspects of; prisoners" lack of contact with the outside world compounds their problems.

3. Law forbear from prosecuting (a felony) in exchange for money or other consideration. Settle (a debt or other matter) in this way; he compounded the case with the defendant for a cash payment.

The following note appears thereafter:

USAGE: The sense of the verb compound which means "make (something bad) worse", as in this compounds their problems, has an interesting history. It arose through a misinterpretation of the phrase compound a felony, which strictly speaking, means "forbear from prosecution a felony in exchange for money or other consideration: The "incorrect" sense has become the usual one in legal uses and, by extension, in general senses too, and is now accepted as part of standard English.

The word has the meaning "forbear from prosecuting a crime in exchange of money or other consideration". This meaning of the term, because of its association with felony, appears to have led to use of expression in an incorrect sense as indicated in (2) above. Be that as it may, what is relevant for our purpose is that compounding is forbearance from prosecuting a crime. It may be for material consideration, it may be for other considerations. Receipt of money or compensation may be one consideration. Piety and forgiveness may be the other. Acceptance of the explanation/justification may be yet another. For the purpose for which we are concerned, we are interested not on the motivations that prompted a person to forbear from prosecution, we are concerned only with the act of forbearance. Considerations relevant, irrelevant, sublime or coarse may prompt a victim to forbear from prosecution. The Court is concerned only with the willingness of the victim to forbear from prosecution. If he is willing and his decision to forbear is genuine and voluntary the composition has to be accepted when the offence is compoundable without permission."

It is significant to notice that the learned Judge was of the view that "compound is forbearance from prosecuting a crime, in exchange of money or other consideration".

12. In Mathew. N.J. Vs. The State of Kerala and Others, the issue was considered under S. 68 of the Kerala Forest Act, 1961. After referring to the various decisions including Sivapalan Vs. R.T.O., , it was held thus in para 7:

The word "compound" means "settle by mutual concession". To "compound" a debt, is to abate a part on receiving the residue (see Haskins v. New Comb, 2 Johns 408; Pennell v. Rhodes, 9 Q.B. 129). The word "compound" as used in S. 320 of the Code means "to forbear from prosecution for consideration or any private motive." It is ridiculous to say that for the purpose of compounding under S. 68 there is an offence and for the purpose of prosecution, there is a difference offence. Once the offence is lawfully compounded, nothing survives to be proceeded with, whether a prosecution has already been launched or not.

In fact, the argument raised therein was in the light of the stand of the Divisional Forest Officer that he has no authority to compound the offence, as the case is pending consideration before the court. Importantly, it was held that "once the offence is lawfully compounded, nothing survives to be proceed with, whether a prosecution has already been launched or not." In para 9, it was directed that in case the offence is compounded, the Officer compounding the offence has to give a report to the Court where the case is pending and on such report being received the case is to be closed and the accused if he is in custody, is to be discharged. Therefore, the above decisions are unanimous in one point that once the offence is compounded, nothing survives against the accused and no proceedings can therefore be continued once the case is closed.

13. In Black's Law Dictionary, 6th Edn., under the heading "compounding crime", it has been explained thus:

Compounding crime: Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime. There are three elements to this offence at common law, and under the typical compounding statute: (1) the agreement not to prosecute; (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.

The offence committed by a person who, having been directly injured by a felony, agrees with the criminal that he will not prosecute him, on condition of the latter's making reparation, or on receipt of a reward or bribe not to prosecute.

The offence of taking a reward for forbearing to prosecute a felony; as where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute.

14. Shri Babu S. Nair, the learned counsel appearing for some of the petitioners and the other learned counsel for the petitioners submitted that in the light of

the dictum laid down by this Court and the Apex Court in various decisions, it can be seen that only on a written complaint alone cognizance can be taken. A Police report also cannot be acted upon. It is submitted that while interpreting the provisions of the Central Act and the relevant rules, the said legal position is also significant. It is also submitted that the statute does not provide for any freedom independent of the result of the compounding, to proceed further unlike the provisions under the Abkari Act and the Forest Act relating to confiscation proceedings. In those enactments, the authorised officer is empowered to pass an order of confiscation whether or not a prosecution is instituted for the commission of such offence.

15. Now I shall consider the dictum laid down in the various decisions of this Court regarding the necessity to file a written complaint. In *Moosakoya Vs. State of Kerala*, , the Division Bench interpreted S. 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001. In para 3, it was held that the court cannot take cognizance of the offence punishable under the Sand Act, 2001 on a Police report filed under S. 173(2) of the Cr.P.C. The relevant findings are as follows:

A plain reading of the above provision will show that even though by S. 24 all offences under the Act are made cognizable, no court can take cognizance of the offence except upon a written complaint made by a person authorised in this behalf by the Government or the District Collector or a Geologist of the Department of Mining and Geology, A "complaint in writing" by the authorised officer etc. is the only condition for taking cognizance as provided in S. 25. If a police officer is authorised by the Government, he may also file a complaint on the basis of which the court may take cognizance. But, the court cannot take cognizance of any offence punishable under the Sand Act on a police report filed under S. 173(2) of the Cr.P.C. after investigation by police.

This decision was approved by the Apex Court while considering a similar provision under the Transplantation of Human Organs Act, in *Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation*, . The exposition of law made by the Division Bench of this Court was affirmed in para 23. In para 20, the legal position was explained thus:

20. It is a well-settled principle of law that if a special statute lays down procedures, the ones laid down under the general statutes shall not be followed. In a situation of this nature, the respondent could carry out investigations in exercise of its authorization under S. 13(3)(iv) of TOHO. While doing so, it could exercise such powers which are otherwise vested in it. But, as it could not file a police report but a complaint petition only; sub-section (2) of S. 167 of the Code may not be applicable. The provisions of the Code, thus, for all intent and purport, would apply only to an extent till conflict arises between the provisions of the Code and TOHO and as soon as the area of conflict reaches, TOHO shall prevail over the Code. Ordinarily, thus, although in terms of the Code, the respondent upon completion of investigation and upon obtaining remand of the

accused from time to time, was required to file a police report, it was precluded from doing so by reason of the provisions contained in S. 22 of TOHO.

To put it differently, upon completion of the investigation, an authorized officer could only file a complaint and not a police report, as a specific bar has been created by the Parliament. In that view of the matter, the police report being not a complaint and vice-versa, it was obligatory on the part of the respondent to choose the said method invoking the jurisdiction of the Magistrate concerned for taking cognizance of the offence only in the manner laid down therein and not by any other mode. The procedure laid down in TOHO, thus, would permit the respondent to file a complaint and not a report which course of action could have been taken recourse to but for the special provisions contained in S. 22 of TOHO.

16. A learned Single Judge of this Court again examined the provisions under the Sand Act, 2001, in Abdul Azeez Vs. State of Kerala, . Following the decision in Moosakoya Vs. State of Kerala, as affirmed in Jeewan Kumar Raut and Another Vs. Central Bureau of Investigation, , the learned Judge held in para 9 that cognizance cannot be taken on a final report submitted under S. 173(2) of the Cr.P.C. and cognizance can be taken only on a complaint in writing made by the officer authorised as provided under S. 25 of the Act. This decision was affirmed in Ismayil Vs. State of Kerala, on a reference made to the Division Bench. The Bench was of the following view in para 24:

The statute unambiguously postulates a specific method for taking cognizance. Generally, any person can set the criminal law into motion. But, there are exceptions which are provided to the said principle in the Code and also in various special statutes. Instances of the exceptions are Sections 198, 199 of Code of Criminal Procedure. S. 25 of the Act is another instance of a statutory prohibition against cognizance of the offence being taken in any manner other than what is provided therein. Therefore, the Legislature intended that cognizance can be taken only in the manner which is contemplated under S. 25 of the Act. This means that Legislature intended the provisions to be mandatory and it intended further that what is provided therein is to be followed without any deviation. We cannot assume that the Legislature is unaware of the provisions of S. 2(d) or S. 2(r) of the Code. That is to say, the Legislature was very much aware that the word "complaint" as defined in S. 2(d) does not include a police report. The Courts would ascribe knowledge of the existing law to the Legislature when a law arises for interpretation. This being the position though it may be possible for the prosecution to point to the contents of the police report and canvass that it may also answer the description of a complaint, we are of the view that in the nature of the statute and the decision of the Apex Court approving the decision of the Division Bench in Moosakoya's case and also the fact that the police reports in all these cases do not give any indication whatsoever that is intended to be filed as a complaint or even that it is filed by the police officer as authorised officer under the Act cognizance taken in all these cases would be hit by the prohibition contained in S. 25 of the Act namely that

cognizance can be taken only on the strength of a complaint.

In fact, the specific question considered by the Division Bench was whether a final report filed under S. 173(2) of the Code of Criminal Procedure, 1973 could be considered to be a complaint in the light of S. 2(d) of the Code for the purpose of taking cognizance under S. 25 of the Protection of River Banks and Regulation of Removal of Sand Act, 2001.

After referring to the decision in Moosakoya's case (supra), as well as Jeewan Kumar Raut's case (supra), the legal position was explained.

17. The provisions of the Central Act herein and that of the Rules are similarly worded as regards taking cognizance. S. 22 of the Central Act provides for taking cognizance only upon a complaint in writing made by a person authorised in this behalf by the Central Government or the State Government. As already noticed, under S. 21(4A), the power to order confiscation is conferred on the court itself, which is competent to take cognizance of offence. Therefore, evidently only on a written complaint alone the court can take cognizance.

18. This legal position under the very same enactment has been explained by a learned Single Judge of this Court in the decision reported in P.M. Sumesh Vs. State of Kerala and Another, , wherein in para 5 it has been held that a report filed by the Sub Inspector after investigation in a crime registered under S. 173(2) of the Code, cannot be treated and considered as a complaint enabling the court to take cognizance of the offence stated thereunder. Reliance was placed on Ismayil Vs. State of Kerala, .

19. The effect of S. 23A(2) will be clear from the mandatory terms under which it is stated that "where an offence is compounded under sub-section (1), "no proceeding" or "further proceeding", as the case may be, shall be taken against the offender in respect of the offence so compounded." Learned Government Pleader emphasised the word "offender" therein to contend that confiscation of a vehicle is different and the bar is only in respect of any proceeding against the offender. But when we consider the effect of sub-section (2) of S. 23A read with S. 22, it can be seen that once the compounding application is allowed, no further action is contemplated, as the complaint can only be disposed of in terms of the order on the compounding application. This so in the case of similarly worded provisions under R. 60A of the Rules. An offence can be compounded, under the said rule, either before or after the institution of prosecution, by the person authorised to file the complaint under R. 59. Thus, even after filing the complaint the offence can be compounded. When it is insisted that a written complaint should be there for taking cognizance of offence and when the effect of compounding is that no proceedings or further proceedings can be taken, it cannot be held that the vehicle is still liable to confiscation by the same court. Of course, it was argued by the learned Government Pleader that the driver alone is the accused in many cases and the owner of the vehicles could be proceeded with. But as rightly pointed out by the learned counsel for the petitioners, in the

absence of an offender named, after the composition the proceedings cannot be continued. Herein, since the power to order confiscation is conferred on the court itself and not on any other authorities as in some other enactments, the peculiar situation pointed out will arise. At any rate, there is no enabling provision providing for the same. The following observations of the learned Single Judge in Mathew N.J.'s case (supra), are apposite here: "It is ridiculous to say that for the purpose of compounding under S. 68, there is an offence and for the purpose of prosecution, there is a different offence."

Without an offender, the complaint, after composition of the offence, cannot proceed any further.

20. These provisions can be compared with S. 67B of the Abkari Act and S. 61A of the Forest Act for noting the difference between the procedures prescribed. S. 67B of the Abkari Act, 1077 provides for confiscation by abkari officers in certain cases. Subsection (2) of S. 67B reads as follows:

(2) Where an authorised officer seizes and detains any property specified in sub-section (1) or where any such property is produced before an authorised officer under that sub-section and he is satisfied that an offence under this Act has been committed in respect of or by means of that property and that such property is liable to confiscation under this Act, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property and where such property consists of any receptacle or package, the authorised officer may also order confiscation of all contents thereof.

The expression therein "whether or not prosecution is instituted for the commission of offence" is quite important. As far as Kerala Forest Act, 1961 is concerned, the provision reads as follows:

61A. Confiscation by Forest Officers in certain cases.-- Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes under sub-section (1) of Section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorised officer under sub-section (1) of this section and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

Therein also, an order of confiscation can be passed whether or not a prosecution is instituted, of the forest offence. The non obstante clause is significant. Significantly, under the Central Act as well as the Rules herein, such enabling provisions are not there. This also definitely supports the plea of the petitioners. In the Kerala Forest Act, power under S. 61A is conferred on various officers in certain cases. The same is notwithstanding anything contained in the foregoing provisions of the same Chapter. It has been held by this Court in M.K. Sasidharan Vs. The Forest Range Officer and Others, that the officers exercising powers under S. 61A may proceed with confiscation proceedings de hors any other provision under the Chapter. S. 61A of the Act is independent of the powers conferred on the Magistrate under S. 52(2) of the Act. The same is also therefore significant while considering the enactment herein as there are no similar provisions under the Central Act herein.

21. Learned Government Pleader relied upon the decision of a learned Single Judge of the Patna High Court in Manoj Kumar Sharma Vs. The State of Bihar and Others under the Forest Act (16 of 1927) to contend for the position that confiscation proceedings can be initiated separately. Therein, the view taken is that the provision for confiscation is separate. The argument therein was also that after the confiscation proceedings initiated, an application for compounding was filed and the authorised officer proceeded with the confiscation proceedings. Reliance was placed on Section of the Act to contend that the officer was obliged to release the vehicle. In para 16, the issue was examined and it was held as follows:

16. Section 68(1)(a) of the Act provides for acceptance of compensation for the offence from a person suspected to have committed the offence whereas S. 68(1) (b) provides for release of the property seized and liable for confiscation on payment of the value thereof by Forest Officer empowered by the State Government. Thus the two provisions operate in different field and whereas S. 68(1)(a) contemplates of payment of compensation for the offence by a person suspected to have committed the offence. S. 68(1)(b) provides for release of the property seized and liable for confiscation on payment of the value thereof. Here at no point of time the petitioner ever made any prayer for release of the truck on payment of value thereof. It is on payment of compensation or the value of the property seized the suspected person in custody shall be discharged and property released, as the case may be and further proceeding, shall not continue against such person, which would be evident from S. 68(2) of the Act. In such circumstances, I am of the opinion that the authorised officer did not err in proceeding with the confiscation proceeding and ultimately passing the order of confiscation.

Therein, the scheme is different from the one herein. The property seized and liable for confiscation can be released on payment of value thereof. Therein, the provisions under Sections 68(1)(a) and (1)(b) were considered and the provisions are not *pari materia* as that of the Central Act herein. Therefore, the

same will not help the argument of the respondents and the dictum laid down therein is clearly distinguishable.

22. The question considered in *The Circle Inspector (Excise) Neyyattinkara and Others Vs. K. Mukundan*, by a Division Bench was under the pre amended provision of Kerala Abkari Act 1077, viz. S. 67 regarding compounding of offence by a driver of the vehicle belonged to another. It was held that the section does not authorise confiscation of vehicle. The scheme therein is different from the one herein.

23. In the light of the above, the petitioners are entitled to succeed. It is declared that once the offences alleged are compounded, no further proceedings for confiscation of the vehicles can be sustained. Therefore, in cases where the offences are compounded in the light of subsection (2) of S. 23A of the Act and R. 60A of the Rules, no proceedings can be taken against the offender. In the light of the fact that the court can take cognizance only on a complaint in writing, it cannot be said that after the composition of the offence a fresh complaint can be filed. Even in respect of cases where complaint has been filed, if the offence is compounded, a report will have to be filed before the court and the complaint will have to be closed. When power is given to the court itself to confiscate the vehicle and no separate procedure is prescribed in such cases by the main body of S. 21, it is not possible to accept the contention of the learned Government Pleader that again an order of confiscation can be passed by the court. No specific procedure is prescribed under the enactment or under the Miner Mineral Concession Rules to approach the court in such cases to proceed with the confiscation proceedings. The rules framed under S. 15 of the Act by the State Government do not provide anything with regard to the confiscation proceedings as already noticed. It may be a matter for consideration by the appropriate bodies to bring in new provisions concerning confiscation proceedings.

Therefore, the Writ Petitions are disposed of with the following directions:

- 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.

The Writ Petitions are allowed as above. No costs.