

(2013) 05 KL CK 0011

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 13104 of 2013 (K)

Sunil Kumar, Vijayan, Pradeep and Saratlal S.

APPELLANT

Vs

The District Collector and The Sub Inspector of Police,
Punaloor Police Station

RESPONDENT

Date of Decision : 24-05-2013

Acts Referred:

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

Citation : (2013) 05 KL CK 0011

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

Bench : Single Bench

Advocate : Anitha M.N, for the Appellant; K.C. Vincent, Sr. Govt. Pleader, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The issue involved in this case is, whether the petitioners who have 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 and is entitled to have the offence compounded in view of the desire expressed from their side in this regard. Heard the learned Government Pleader as well.

2. The particulars of the petitioners, their vehicles and such other details are in the tabulated form as given below:

Name of the petitioner

Vehicle No.

Seized by

Sunil Kumar

KL 35 7334

The S.I. of Police, Punaloor P.S.

Vijayan

KL 25 4862

The S.I. of Police, Punaloor P.S.

Pradeep

KL 40 3306

The S.I. of Police, Punaloor P.S.

Saratlal S.

KL 31 D 4981

The S.I. of Police, Punaloor P.S.

3. Unlike the Kerala Protection of River Banks and Regulation of Removal of Sand Act, there cannot be any confiscation of the vehicle in respect of the offences under the Mines and Mineral (Development and Regulation) Act, 1957 or the Kerala Minor Mineral Concession Rules, 1967. 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 was passing various orders in connected similar matters enabling the concerned petitioners to have the interim custody of the vehicle released on satisfaction of a sum of Rs. 25,000/- and also by directing the concerned respondent to consider the application for compounding, if any.

4. 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.

5. The directions given as per the above verdict is 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.

6. It is stated that some of the parties have already filed applications for compounding, whereas in respect of some others, it is stated that the concerned Sub Inspector/competent authority has not accepted the application proposed to be filed in this regard. In view of the law declared as mentioned herein before, there will be a direction to the concerned respondent to accept the application filed/to be filed by the concerned petitioners to compound the offence; which shall be considered and appropriate orders shall be passed in terms of the decision rendered by this Court in Digil Vs. Sub Inspector of Police, forthwith. If for any reason, the relief sought for is declined, intending to proceed with the prosecution steps, interim custody of the vehicle/s shall be released to the concerned petitioner/s on satisfaction of a sum of Rs. 25,000/- (Rupees twenty five thousand only) in respect of each vehicle and on giving an undertaking that the vehicle/s will be produced as and when required; that the vehicle/s will not be alienated and that no action will be pursued so as to diminish the value of the vehicle/s during the pendency of the proceedings.

The writ petition is disposed of.