

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

Crl.MC.No. 446 of 2015

IN Crl.M.P no.7672/2014 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT- I, OTTAPPALAM

CRIME NO. 87/2014 OF OTTAPPALAM EXCISE RANGE OFFICE , PALAKKAD

PETITIONER/ACCUSED NO.2:

PURUSHOTHAMAN, AGED 60 YEARS,
S/O.KRISHNAN, KOLAMBIL HOUSE,
VELLIYADU DESOM,
VANIYAMKULAM VILLAGE, OTTAPALAM TALUK.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 446 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A- PHOTOCOPY OF THE MAHAZAR DATED 20.11.2014 PREPARED BY
THE C.I. OF EXCISE, OTTAPALAM.

ANNEXURE B- PHOTOCOPY OF THE TODDY TRANSPORT PERMIT DATED
14.10.2014 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, PALAKKAD.

ANNEXURE C- COPY OF THE ORDER DATED 6.1.2015 IN
CRL.MP.NO.7672/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, OTTAPALAM.

ANNEXURE D- PHOTOCOPY OF THE ORDER DATED 10.11.2014 IN
CRL.M.C.NO.6294/2014 PASSED BY THIS HON'BLE COURT.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

Crl.M.C No.446 of 2015

Dated this the 25th day of March, 2015

O R D E R

The petitioner herein claims to be the registered owner of the vehicle No.KL-11/B-5256, seized by the Excise Inspector, Ottapalam in a crime registered under Section 56(b) of the Kerala Abkari Act. The allegation is that the said vehicle was seen used for transportation of some quantity of toddy in excess of the quantity permitted under license. The petitioner made an application before the Judicial First Class Magistrate Court I, Ottappalam for interim custody of the vehicle. The learned Magistrate dismissed the application on 6.1.2015 on the ground that confiscation proceedings are now pending before the Deputy Commissioner of Excise. The said order in C.M.P No.7672/2014 is under challenge.

2. On hearing both sides, and on a perusal of the report submitted by the Excise Inspector, I find that the vehicle can be released to the petitioner on appropriate reasonable conditions if he is the registered owner of the vehicle, subject to

the result of the confiscation proceedings before the authorised officer. It appears that the learned Magistrate dismissed the claim on the belief that the Deputy Commissioner of Excise is the right authority to release the vehicle. The proper judicial authority to release the vehicle under Section 457 Cr.P.C, is no doubt, the Judicial Magistrate having jurisdiction over the area. Of course the authorised officer can initiate confiscation proceeding and pass appropriate orders regarding confiscation after notice to the concerned parties, and after giving them effective opportunity of being heard. What is alleged in this crime is not a serious case. It is only a compoundable offence and the allegation is that some excess quantity of toddy was seen transported in the vehicle. Anyway, let appropriate decision be taken by the authorised officer. The judicial authority cannot leave things within his province, to the executive authority. Let proceedings go on before the authorised officer. But the judicial orders will have to be passed by the judicial authority under Section 451 or under Section 457 of the Code of Criminal Procedure. It will, of course, be subject to the confiscation orders passed under the law.

In the result, this Criminal Miscellaneous Case is allowed. The impugned order is hereby set aside and the court below is directed to release the vehicle to the petitioner on appropriate reasonable conditions, if the petitioner is the registered owner of the vehicle or otherwise entitled to claim custody, of course subject to the confiscation orders that may be passed under the Kerala Abkari Act.

**P.UBAID
JUDGE**

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