

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

Crl.MC.No. 1832 of 2015 ()

**SC.NO. 199/2001 OF ASSISTANT SESSIONS COURT, SULTHAN BATHERY
CRIME NO. 341/1999 OF BATHERY POLICE STATION, WAYANAD**

PETITIONER/1ST ACCUSED :

**BABULAL BHAGAL
AGED 71 YEARS, S/O.MANGI RAM,
17 MEENA ENCLAVE, DAYAL BAGH P.O.
AGRA, UTTAR PRADESH.**

BY ADV. SRI.M.R.SASITH PANICKER

RESPONDENT(S) :

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM-682 031.**
- 2. CIRCLE INSPECTOR OF POLICE,
SULTHAN BATHERY, WAYANAD-675 001.**

R1 & R2 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 20-08-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- ANNEXURE 1 :** CERTIFIED COPY OF THE FIR DATED 25-08-1999 IN CR.NO.341/1999 OF THE BATHERY POLICE STATION.
- ANNEXURE 2 :** TRUE COPY OF THE SCENE MAHAZAR IN CR.NO.341/1999 OF THE BATHERY POLICE STATION.
- ANNEXURE 3 :** CERTIFIED COPY OF FI STATEMENTS OF CW 1 TO 10.
- ANNEXURE 4 :** CERTIFIED COPY OF THE CHARGE SHEET DATED 30-11-1999 IN CR.NO.341/1999 OF BATHERY POLICE STATION.
- ANNEXURE 5 :** COPY OF THE FORM TTP ISSUED BY THE INSPECTOR OF STATE EXCISE BORDER CHECK POST PALASNER, MAHARASHTRA TO THE TRANSPORTER DATED 21-08-1999.
- ANNEXURE 6 :** COPY OF THE DECLARATION DATED 16-08-1999 UNDER FORM 27B OF THE KERALA GENERAL SALES TAX RULES.
- ANNEXURE 7 :** COPY OF THE PERMIT NO.97/1999-2000 ON 2-8-1999 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, PONDICHERRY.
- ANNEXURE 8 :** COPY OF THE SHOW CAUSE NOTICE NO.W5-2526/99 DATED 21-2-2000 ISSUED TO THE 1ST PETITIONER BY THE ASST. EXCISE COMMISSIONER, WAYANAD.
- ANNEXURE 9 :** COPY OF THE ORDER NO.W5-2526/99 DATED 25-2-2000 EXONERATING THE PETITIONER AND THE CO ACCUSED.
- ANNEXURE 10 :** COPY OF THE ORDER NO.XA5-5415/2000/KDIS DATED 29-2-2000 ISSUED BY THE OFFICE OF COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

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ALEXANDER THOMAS, J.

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Dated this the 20th day of August, 2015.

ORDER

The prayer in this Crl.M.C is as follows:

“i. To quash all proceedings initiated against the Petitioner/1st accused in SC No 199/2001 pending before the Honourable Assistant Sessions Judge, Sulthan Bathery pursuant to Annexure-1 FIR, Annexure-4 charge sheets in Cr.No.341/1999 of Bathery Police Station.”

2. Petitioner is the 1st accused in S.C.No.199/2001 on the file of the Assistant Sessions Court, Sulthan Bathery, which is now pending as L.P.No.1/2008 on the file of the Assistant Sessions Court, Sulthan Bathery, pursuant to registration of Anx-A1 Crime No.341/1999 of Bathery Police Station, registered for offence punishable under Secs.55(a) of the Abkari Act, Rule 9 of the Foreign Liquor Rules and Sec.8(1)(a) of the Abkari Amendment Ordinance 1997. The prosecution case is that on 25.8.1999 at about 6:00 a.m, the petitioner and accused 2 & 3 who intended to sell liquor illegally in Kerala, were apprehended by the 2nd respondent along with 550 cases of IMFL without possessing legal

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documents in a lorry bearing Reg.No.UP 80 N 9587, while smuggling the contraband to Kerala. The petitioner is stated to be the owner of the vehicle alleged in the involvement of the crime. It is stated by the petitioner that the consignment in the vehicle was sent by Rampur Distillery in favour of M/s Kwality Wine, Mahi. It is the contention of the petitioner that Anxs-A8 & A9 would show that the petitioner was fully exonerated of all charges by the Assistant Excise Commissioner, Wayanad, and that the petitioner and the other accused in the impugned crime, who are hailing from North India, were not aware of the route in Kerala. Accordingly, it is contended that the impugned crime registered against the petitioner is not maintainable and there is no chance for presumption.

3. The learned Public Prosecutor would submit that the case of the investigating officials submitted a report on 30.11.1999 and the court below had committed the case to the Assistant Sessions Court, Sultan Bathery for trial in S.C.No.199/2001. All the accused had obtained bail during investigation stage and nobody

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has turned up before the court for trial and the case was included in the long pending case as L.P.No.1/2008 and that for the last 7 or more years police have been searching for the accused and that the accused themselves kept away from the law for the whole period. The petitioner has a leading role in the crime since he acted as the driver of the vehicle using the transport of the contraband. Accordingly, it is submitted that the contentions of the petitioner as per Anx-A8 and A9 are not sustainable in law, etc.

4. Heard Sri.M.R.Sasith Panicker, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

5. After hearing both sides and on a consideration of the rival pleas as well as the materials available, this Court is of the considered opinion that extra ordinary jurisdiction conferred under Sec.482 of the CrI.P.C need not be exercised in the facts and circumstances of the case. It is for the petitioner to work out his

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remedies in accordance with law. It is made clear that this Court has not entered into the merits of the matter and it is for the accused and prosecution to advance their rival contentions in the manner known to law.

With these observations and directions, this Crl.M.C stands closed.

ALEXANDER THOMAS,
Judge.

bkn/-