

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

Crl.MC.No. 3638 of 2015

**SC 371/2010 OF ASSISTANT SESSIONS COURT, ATTINGAL.
CRIME NO. 129/2008 OF VARKALA POLICE STATION, THIRUVANANTHAPURAM.**
.....

PETITIONER/ACCUSED NO.1:

**MOHAMMED, AGED 31 YEARS,
S/O.KAMIL HASSAN, LAILA MANZIL,
JANARDHANAPURAM DESOM,
PERUMKULAM, VARKALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT.**

**BY ADVS.SRI.P.N.SUKUMARAN
SRI.K.A.ANAS**

RESPONDENT(S)/STATE/COMPLAINANT:

- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**
- 2. SUB INSPECTOR OF POLICE,
VARKALA POLICE STATION,
THIRUVANANTHAPURAM DISTRICT.**

BY PUBLIC PROSECUTOR SRI.GITHESH.R

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 02-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE 1 : TRUE COPY OF THE FIR REGISTERED AS CRIME NO.129/2008
 OF VARKALA POLICE STATION & MAHAZAR.**

**ANNEXURE 2 : CHARGE SHEET IN SC.NO.371/2010 OF THE HON'BLE
 ASSISTANT SESSIONS COURT, ATTINGAL.**

RESPONDENTS' ANNEXURES: NIL.

//TRUE COPY//

P.S. TO JUDGE

mbr/

ALEXANDER THOMAS, J.

=====

Crl.M.C.No.3638 of 2015

=====

Dated this the 2nd day of July, 2015

ORDER

The prayer in this Crl.M.C. is instituted under Section 482 of the Code of Criminal Procedure seeking invocation of this Court's inherent powers conferred which are under is that, to quash the impugned Annexure 2 final report/charge sheet filed in Crime No. 129/2008 of Varkala Police Station which has led to the institution of S.C.No.371/2010 on the file of Assistant Sessions Court, Attingal Thiruvananthapuram District. The petitioner herein is the accused No.1 in the aforementioned FIR in Crime No.129/2008 of Varkala Police Station registered for offence under Section 55(a)and (i) of the Kerala Abkari Act. The gist of the prosecution case is that the accused have stored 9 bottles of King Fisher Beer, having quantity of 650 ml each, for sale, inside the water tank which is situated on the Northern side of Rock 'N' Roll Restaurant, Varkala and after seizure of the said articles, the police has registered the above case against two accused persons. The sheet anchor of the arguments raised by

Sri.P.N.Sukumaran, learned counsel appearing for the petitioner is that as per Statutory Rules and Order (S.R.O.) notification No. 127/1999 issued by the Government of Kerala under the enabling powers under Section 10, 13 and other provisions of the Kerala Abkari Act, it is stipulated that the maximum quantity of liquor that can be possessed or transported without a permit or licence is 7.8 litres. That even going by the admitted case projected by the prosecution, the impugned criminal proceedings, the maximum quantity of liquor said to have been allegedly possessed by the accused is 9 bottles of King Fisher Beer of 650 ml each coming to (650 ml x 9 bottles) 5.85 ltrs. and therefore it comes within the permissible limit envisaged in the statutory notification issued as per S.R.O.No.127/1999 and therefore the offence under the provisions of the Abkari Act will not lie. Further it is urged that there is no material whatsoever in the impugned Annexure 2 Final Report/Charge Sheet to even remotely suggest or whisper that so as to connect the accused in the crime with the allegation that those bottles of beer was stored with the intention of sale of the same. The learned counsel for the petitioner has relied on the legal principles laid down by this Court in a series of cases as in Mohanan

v.State of Kerala, reported in 2007 (1) KLT 845, Prasanth v. State of Kerala reported in 2002 KHC 134, B.Abdulla v. Station House Officer and Another reported in 2007 (4) KHC 907, Sabu v. State of Kerala, reported in 2003 KHC 386 and Nobbey and Another v. State of kerala and others reported in 2010 KHC 1068 to contend that in view of the indisputable fact that the total quantity of liquor allegedly possessed by the accused is only less than the maximum permissible quantity, the impugned proceedings are liable to be quashed.

2. Heard Sri.P.N.Sukumaran, learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondents.

3. On going through the impugned Annexure 2 final report/charge sheet it can be seen that there are no materials even to remotely suggest the aspect of the accused intended to sell the liquor allegedly possessed by them. Further in view of the aforestated reported rulings of this Court even going by the admitted prosecution case, the total quantity of liquor allegedly possessed by the accused is only 5.85 ltrs. whereas the permitted maximum quantity as per S.R.O.No. 127/1999 issued by the

Government of Kerala under the enabling provisions in the Kerala Abkari Act is up to 7.8 ltrs. Following the reasonings in the catena of reported rulings of this Court as aforestated, this Court is inclined to consider the prayer for quashment. Accordingly it is ordered that the impugned Annexure 2 final report/charge sheet filed in FIR No.129 of 2008 of Varkala Police Station which has led to the institution of S.C.No.371/2010 on the file of Assistant Sessions Court, Attingal, Thiruvananthapuram District Pending against the petitioner and all further proceedings arising therefrom pending against the petitioner are quashed.

The Crl.M.C.stands finally disposed of.

Sd/- ALEXANDER THOMAS, JUDGE

