

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

Crl.MC.No. 4065 of 2014 ()

CC.NO. 809/2009 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -V,KOZHIKODE

PETITIONER/ACCUSED:

**GANESAN, S/O AYYAPPAN, AGED 54 YEARS,
KAVUVALAPPIL HOUSE, VELIPRAM AMSOM,
KARINKALLAI DESOM, KOZHIKODE.**

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENT/COMPLAINANT/STATE:

- 1. SUB INSPECTOR OF POLICE,
FEROKE POLICE STATION, KOZHIKODE-673 632.**
- 2. STATE,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**

BY PUBLIC PROSECUTOR SMT. MAYA

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 15-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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Crl.MC.No. 4065 of 2014 ()

APPENDIX

PETITIONER(S)' ANNEXURES:

- ANNEX I: COPY OF THE FINAL REPORT IN CC 809/09.**
- ANNEX II: COPY OF THE REPORT FILED BY THE LEARNED ASSISTANT PUBLIC PROSECUTOR OF MARCH 2014.**
- ANNEX III: COPY OF THE ORDER OF THE JUDICIAL IST CLASS MAGISTRATE V KOZHIKODE IN CMP 2279/14.**
- ANNEX IV: COPY OF THE NOTIFICATION GSR 460 E ISSUED BY THE GOVERNMENT.**
- ANNEX V: COPY OF THE COMMUNICATION DATED 17.11.08.**

RESPONDENT(S)' ANNEXURES:

NIL

/TRUE COPY/

P.A.TO JUDGE

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B.KEMAL PASHA, J.

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Crl.M.C. No. 4065 of 2014

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Dated this the 15th day of December, 2015

O R D E R

The petitioner is the accused in C.C.No.809/2009 of the Judicial First Class Magistrate's Court-V, Kozhikode, for the offences punishable under Sections 3 and 6 of the Essential Commodities Act read with Section 9B of the Explosives Act.

2. The court below framed the charge for the said offences and commenced the trial. Towards the fag end of the trial, the learned Assistant Public Prosecutor filed Annexure-II report for adding the offence under Section 3(4) of the LPG (Regulation of Supply and Distribution) order, 2000 and to alter the charge under Section 6 of the Essential Commodities Act to Section 7 of the Essential Commodities Act. Through Annexure-III order,

the court below has allowed the said C.M.P even though there was stiff resistance from the part of the petitioner.

3. In this particular case, the search and seizure were allegedly conducted by the Deputy Collector attached to the Land Revenue Department.

4. As per Clause 13(1) of the LPG (Regulation of Supply and Distribution) order, 2000, the Deputy Collector, Land Revenue cannot be an authorised officer within the meaning of Annexure-IV notification issued by the Government. In the notification, all Officers of the Civil Supplies Department not below the rank of Taluk Supply Officer along with the other officers of the oil company mentioned therein are the authorised officers to conduct search and seizure. When the search and seizure were allegedly conducted by the Deputy Collector, Land Revenue, he is not an authorised officer within the meaning of Annexure-IV notification and therefore, such search and seizure are not legally sustainable. Matters being so, the court below ought

not to have passed Annexure-III order for the alteration of the charges. Annexure -III is not legally sustainable and hence, the same is liable to be quashed.

In the result, this Crl.M.C is allowed and Annexure-III order passed by the court below stands quashed. The court below is directed to proceed with the trial once started earlier and continue it.

Sd/-
B.KEMAL PASHA, JUDGE

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