

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

Cr1.MC.No. 6679 of 2015 ()

ST 57/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT, ATTINGAL
(TEMPORARY)

CRIME NO. 14/2014 OF CHIRAYANKEEZHU EXCISE RANGE OFFICE,
THIRUVANANDAPURAM

PETITIONER/ACCUSED:

UNITED SPIRITS LTD.,
VARANADU, CHERTHALA,
REPRESENTED BY ITS DEPUTY GENERAL MANAGER
MR. JAIKRISHNA K.

BY ADV. SRI.RAJU K.MATHEWS

RESPONDENTS/COMPLAINANTS:

1. STATE OF KERALA
REPRESENTED BY IT STATE PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 682 031.

2. EXCISE COMMISSIONER,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 001.

3. EXCISE INSPECTOR,
EXCISE RANGE OFFICE, CHIRAYANKEEZHU,
THIRUVANANTHAPURAM DISTRICT- 695 001.

BY PUBLIC PROSECUTOR SMT.MAYA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 29-10-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

DSV/31/10/15

Cr1.MC.No. 6679 of 2015 ()

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-I. COPY OF THE CERTIFICATE NO.3118 DATED 28.7.2008 OF
THE JOINT CHEMICAL EXAMINER TO GOVERNMENT OF KERALA.

ANNEXURE II. COPY OF THE CERTIFICATE NO.12106/2010 DATED
24.11.10 ISSUED BY THE ASSISTANT CHEMICAL EXAMINER TO
GOVERNMENT OF KERALA.

ANNEXURE III. COPY OF THE OCCURRENCE REPORT DATED 20.2.14 IN
EXCISE CRIME NO. 14/2014.

ANNEXURE IV. COPY OF THE NOTICE DATED 28.4.14 OF THE 3RD
RESPONDENT.

ANNEXURE V. COPY OF THE LETTER NO.14/2014/CHIRAYANKEEZHU DATED
26.8.14 OF THE 3RD RESPONDENT.

ANNEXURE VI. COPY OF THE LETTER DATED 13.9.14.

ANNEXURE VII. COPY OF THE FINAL REPORT DATED 31.3.15 SUBMITTED
BY THE 3RD RESPONDENT.

ANNEXURE VIII. COPY OF THE NOTIFICATION
NO.A34/080/KSBC/MD/LIQ/2012-2013 DATED 2.3.12 ISSUED BY THE
KSBC.

RESPONDENTS' ANNEXURES:

NIL

// True Copy //

P.A. To Judge

DSV/31/10/15

B.KEMAL PASHA, J.

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Crl.M.C. No. 6679 of 2015

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Dated this the 29th day of October, 2015

ORDER

The petitioner is the accused in S.T.No.57 of 2014 of the Judicial First Class Magistrate's Court, Attingal, which has arisen from Excise Crime No.14 of 2014 of the Chirayankeezhu Excise Range, alleging an offence under Section 56(b) of the Abkari Act.

2. The allegation is that when the sample drawn from a batch of No.(1) MC Dowell's Brandy manufactured by the petitioner, was subjected to chemical analysis, it was found containing 41.78% of ethyl alcohol only instead of the required minimum of 41.82%. Precisely, there is a shortage of 0.24% of ethyl alcohol in the said Indian Made Foreign Liquor.

3. The first sample was examined and Annexure-I certificate was obtained, which shows that the product satisfied the legal requirements. The second examination as per Annexure-II was conducted more than 800 days after the seizure, in which it was traced out that there is a deficiency of 0.24% strength of ethyl alcohol.

4. The learned counsel for the petitioner has pointed out that the Indian Made Foreign Liquor being supplied should be sold within 360 days of its supply and in case, it is not sold within 360 days, the same should be destroyed. Apart from that, ethyl alcohol will easily evaporate as time goes on, as it is volatile, and therefore, 0.24% deficiency in the strength is of no consequence at all, when it was subjected to chemical analysis only after 800 days of the seizure. Matters being so, the prosecution against the petitioner in S.T.No.57 of 2015 based on Annexure-VII Final Report in Excise Crime No.14 of 2014 of the Excise Range Chirayankeezhu is bad in law and is liable to be

quashed.

In the result, this Crl.M.C. is allowed and the prosecution against the petitioner in S.T.No.57 of 2015 based on Annexure-VII Final Report in Excise Crime No.14 of 2014 of the Excise Range Chirayankeezhu is hereby quashed

Sd/-

B.KEMAL PASHA
JUDGE

DSV/29/10/15

// True Copy //

PA. To Judge