

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 2148 of 2013 (P)

PETITIONER : -

T.C.CHANDY, AGED 48 YEARS,
S/O.LATE CHACKO, THYCKAL HOSUE,
MUTTUCHIRA P.O, KADUTHURUTHY,
KOTTAYAM DISTRICT.

BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS : -

1. THE SUB INSPECTOR OF POLICE,
KADUTHURUTHY POLICE STATION,
KOTTAYAM DISTRICT - 686 604.
2. THE DEPUTY EXCISE COMMISSIONER,
KOTTAYAM - 686 001.
3. THE ADDITIONAL EXCISE COMMISSIONER,
EXCISE HEADQUARTERS,
NANDAVANAM, THIRUVANANTHAPURAM - 695 001.

R1 -R 3 BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : PHOTOCOPY OF THE REPLY TO SHOW CAUSE NOTICE
SUBMITTED BY THE PETITIONER BEFORE THE 2nd RESPONDENT
DATED 13.1.2010 WITHOUT ANNEXURES.

EXHIBIT P2 : PHOTOCOPY OF THE ORDER No.K3-3849/09 DATED 21.2.2012
PASSED BY THE 2nd RESPONDENT.

EXHIBIT P3 : PHOTOCOPY OF THE APPEAL MEMORANDUM DATED 2.4.2012
FILED BEFORE THE 3rd RESPONDENT.

EXHIBIT P4 : PHOTOCOPY OF THE ORDER No.16/APL/2012 AC(X) DATED
6.12.2012 PASSED BY THE 3rd RESPONDENT.

EXHIBIT P5 : PHOTOCOPY OF THE ORDER No.34(B)/APL/2005/AC(X) DATED
20.2.2006 PASSED BY THE 3rd RESPONDENT.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 2148 of 2013

Dated this the 07th day of December, 2015

JUDGMENT

The petitioner is the owner of two vehicles-Mahindra Jeep bearing registration No.KL-05/E-7747 and Bolero Jeep bearing registration No. KL-01/T-1436-both of which had been confiscated by the police on the grounds that they were used for transporting contraband, i.e. Arrack. Having failed in his efforts to get the vehicles released, the petitioner eventually filed the writ petition assailing Exhibit P4 order of confiscation passed in appeal by the Additional Excise Commissioner (Enforcement), Thiruvananthapuram.

2. The facts in brief are that on 19.09.2009, the Sub Inspector of Police, Kaduthuruthy Police Station, along with his men inspected the petitioner's building and allegedly seized 52.5 liters of Arrack. He was also said to have found 5 liters of Arrack in the Mahindra Jeep parked nearby.

3. As a result of the seizure mentioned above, the Police registered Crime No.391/2009 against the petitioner for the alleged offences under Sections 55(a), (g), (h), (i), 55B and

58B(a) and (c) of the Abkari Act.

4. Though the Mahindra Jeep was seized on the day of inspection, i.e. 19.09.2009, the Police subsequently on 21.09.2009 seized the Bolero Jeep as well.

5. When both the vehicles were produced before the Deputy Excise Commissioner, Kottayam, the said authority, exercising his powers under Section 67B of the Act, confiscated the vehicles. Aggrieved, the petitioner filed a statutory appeal before the Additional Excise Commissioner, who in fact dismissed the appeal, thus confirming Exhibit P2 order of the primary authority. Under those circumstances, assailing both Exhibits P2 and P4, the primary order and order in appeal respectively, the petitioner has filed the present writ petition.

6. The learned counsel for the petitioner has submitted that the Arrack was allegedly seized from the petitioner's building, but not from the vehicles. Faced with a specific finding that 5 litres of Arrack was found in Mahindra Jeep, the learned counsel, in the alternative, has submitted that even going by the records there is no whisper that any contraband was found in the Bolero Jeep.

7. In elaboration of his submissions, the learned counsel has contended that Section 65 of the Act is quite explicit that any vehicle could be confiscated only if it was used for transporting the contraband. According to the learned counsel, admittedly the Bolero Jeep was not found with any contraband, nor is it the case of prosecution that the vehicle was caught in the action with incriminating material. In sum and substance, the learned counsel contends that the Bolero Jeep was seized much later only on the premise that it was found in the vicinity of the building.

8. In support of his submissions that the action of the respondent authorities in confiscating the Bolero Jeep is unsustainable, the learned counsel has placed reliance on **Paulson v. Asst. Excise Commissioner**¹ and an unreported judgment dated 12.08.2014 in W.P. (C) No.15185/2010.

9. The learned Government Pleader, on the other hand, in tune with the averments in the counter affidavit filed by the second respondent, has submitted that both the vehicles had been used for transporting the contraband. According to him, since the petitioner is the owner of the vehicles and they were

¹ 2006 (4) KLT 965

found parked within the compound of the building belonging to the petitioner, the authorities are justified in confiscating both the vehicles. He has further stressed the fact that in one of the vehicles five litres of Arrack was found.

10. Be that as it may, the fact, nevertheless, remains that it is not the case of the respondents that any incriminating material was found in the Bolero Jeep, which was seized two days after the inspection by the Police.

11. This Court has consistently interpreted Section 65 of the Act to the effect that the vehicle to be seized ought to have been actually used for transporting the contraband or at least some incriminating material ought to have been found in the vehicle. In the present instance neither is the case.

12. In the facts and circumstances, especially going by the judicial dictum laid down by this Court in **Paulson** (*supra*) and the unreported judgment dated 12.08.2014 in W.P. (C) No.15185/2010, this Court sets aside Exhibit P4 to the extent of confiscating the Bolero Jeep. In other words, this Court is not inclined to interfere with the findings of the authorities concerning the Mahindra Jeep.

As a result, since the petitioner has already had the custody of the vehicle on his providing the cash security, the respondent authorities are directed to release the said amount of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) along with interest it has earned to the petitioner as expeditiously as possible.

With the above observation, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-