

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

WP(C).No. 1096 of 2015 (J)

PETITIONER(S) :

- 1. SABU, AGED 30 YEARS, S/O.SANKARAN
SABU BHAVANAM, ILIPPAKULAM MURI, VALLIKUNNAM VILLAGE
MAVELIKKARA TALUK.**
- 2. SHAJI, AGED 35 YEARS
S/O. PARAMU, VALATHUKATTIL HOUSE, PULLIKKANAKKU MURI
KAYAMKULAM VILLAGE, KARTHIKAPPALLY TALUK.**

**BY SENIOR ADVOCATE SRI.C.C.THOMAS
BY ADV. SRI.M.G.KARTHIKEYAN**

RESPONDENT(S) :

- 1. THE EXCISE COMMISSIONER
COMMISSIONERATE OF EXCISE
THIRUVANANTHAPURAM - 695 033.**
- 2. THE DEPUTY COMMISSIONER OF EXCISE
ALAPPUZHA-688 001**

R1 & R2 BY GOVT. PLEADER SMT. C.K. SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 1096 of 2015 (J)

APPENDIX

PETITIONERS' EXHIBITS :

**EXT. P1- PHOTOCOPY OF THE ORDER DT. 17.12.14 IN CRL.MA NO. 8688/2014 IN
CRL.MC NO. 5190/2014 PASSED BY THIS HON'BLE COURT.**

**EXT. P2 - PHOTOCOPY OF THE GUIDELINES FOR THE EXTENSION OF
PRIVILEGE OF TODDY SHOPS FOR THE YEAR 2015-16 ISSUED BY TH
EXCISE COMMISSIONER.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 1096 of 2015 (J)

Dated this the 5th day of February, 2015.

JUDGMENT

The petitioners, the licencees of toddy shops in Group No.1 of Kayamkulam Excise Range for the year 2014-2017, applied for renewal of the licence for the Abkari year 2015-2016. According to the petitioners, though they have complied with Ext.P2 guidelines, the second respondent did not accept the fee on the ground that CR No. 106 of 2014 of Excise Range, Kayamkulam, was registered against the petitioners. Aggrieved thereby, the petitioners have filed the present writ petition.

2. The learned counsel for the petitioners has submitted that though the privilege was granted for three years i.e., from 2014 – 2017, the lease is only annual, which means every year there is a requirement of applying for renewal, complying with certain statutory formalities. Elaborating on his submissions, the learned counsel has submitted that when the petitioners

applied for renewal for the year 2015–2016, the second respondent refused to accept the requisite fee on a specious plea that a crime has been registered against the petitioners.

3. The learned counsel has drawn my attention to Ext.P1 order of this Court in Crl. M.C. No. 5190 of 2014 to stress that proceedings in Crime No. 506 of 2014 have already been stayed by this Court.

4. The learned counsel has also drawn my attention to Rules 5(1)(a) and (5)(3)(i) of the Kerala Abkari Shops Disposal Rules, 2002 (for short 'the Rules) and laid emphasis on the fact that mere registration of a crime is not a disqualification, since the Rule mandates that a person ought to have been charged with an offence relating to illicit liquor or that prosecution proceedings ought to be pending against the said person to treat it as a disqualification. In that regard, the learned counsel has placed reliance on *Anilkumar v. State of Kerala*¹, *Vijayan v. Excise Commissioner*² and *P.P. Vineesh v. State of Kerala &*

¹ 2013 (3) KLT 358

² 2002 (3) KLT 646

others ³.

5. The learned Government Pleader, on the other hand, has strenuously opposed the claims and contentions of the petitioners. She has submitted that the offence is related to possessing 25 litres of spirit and 60 litres of illicit toddy, which, according to the learned Government Pleader, is a grave offence. She has further submitted that given the gravity of offence, for all practical purposes, it shall be deemed that the petitioners stand charged, and that the proceedings are pending. Either on the first limb of charging an accused or on the second limb of the pendency of prosecution proceedings, the petitioners are disentitled to have their licences renewed. She has further submitted that the petitioners have so far not remitted the requisite advance toddy workers' welfare fund, as well as the other fees, which are the pre-conditions to consider the petitioners' application, if any.

6. The learned Government Pleader has also submitted

³ an unreported judgment of this Court dated 19.03.2008 in W.P.(C) No. 7983 of 2008 and batch

that on more than one occasion, this Court has held that mere olfactory evidence is sufficient once a substance smells of arrack or spirit. In elaboration of her submissions, the learned Government Pleader has submitted that once there is no manner of doubt left as to the nature of substance, it is only hyper technical to insist that there ought to have been chemical analysis of the substance.

7. Heard the learned counsel for the petitioners and the learned Government Pleader for the respondents, apart from perusing the record.

8. Indeed, the issue lies in a narrow compass, inasmuch as mere registration of a crime does not earn a disqualification concerning the renewal of licence. Rule 5(3)(i) of the Rule is to the following effect:

“5. The Grant of privilege of vending Toddy shall be subject to the following conditions, namely:-

(3) No applicant is eligible for the privilege of any group range if he:

(i) is charged with an offence relating to illicit liquor or prosecution proceedings are pending against such applicant before a court of law;”

9. A perusal of the above provision amply demonstrates that to disqualify a licensee from having the licence renewed, the said person ought to have been either charged with an offence or certain prosecution proceedings ought to be pending against him. This Court in *Anil Kumar* has discussed the issue concerning the legal consequence of charging of an offence and has held as follows:

“7. There can be no doubt that in the light of the decisions of this Court in *Rajan's* case and *Sobhanan's* case continuation of proceedings based on crimes registered prior to the receipt of the chemical analysis report of the concerned sample is not permissible. One can say a valid case is registered only if it is registered on the strength of a report of chemical analysis of the sample taken from the shop concerned and forwarded for such analysis. In that view of the matter I am of the considered view that the petitioners are justified in contending that registration of an abkari case against them under S.57(a) of the Abkari Act is not capable of depriving them, the licensees, the right to preference under Rule 5(1)(a) of the Rules. In the said circumstances, the aforesaid argument advanced by the learned Public Prosecutor has to fail. The learned Public Prosecutor has also taken up the contention that holding the view that registration of an abkari case is legally permissible only on receipt of report of the sample taken from the shop in question upon search and forwarded for chemical analysis would be against the interest of the society inasmuch as it would deprive the abkari officers or police officers from registering a case even in case of hooch tragedy. At the first blush it would appear that there is substance in the said contention but, a closer scrutiny of the same would reveal that it is only a claptrap as in such cases necessarily there would be an allegation of commission of an offence under the Indian Penal Code as well. If

a cognizable offence is committed necessarily in terms of the provisions under the Code of Criminal Procedure a crime could be registered and investigation could be commenced and if at a later point of time any other offence under the Indian Penal Code or under any other Act is to be added on investigation there cannot be any legal impediment in incorporating such offences in accordance with law. In such circumstances, the case of the petitioners cannot be thrown out on the aforesaid contention, as well.”

10. In Vijayan (supra), this Court has considered the aspects of both charging and pendency of proceedings. It is profitable to extract the reasoning of the Court, which is as follows:

“In this respect, it is profitable to refer to the decision of this Court in *Paulson v. State of Kerala* (1998 (1) KLT 117). It is in relation to pendency of judicial proceedings in respect of retired employee to deny the retiral benefits. The Explanation under R. 3 Part III of the Kerala Service Rules speaks about the institution of criminal proceedings and it is provided in the relevant rule that a criminal proceedings can be stated to be instituted "on the date on which the complaint or report of police officer on which the Magistrate takes cognizance is made.

.....

Relying on this proposition this Court held that a judicial proceeding can commence only when a Magistrate takes cognizance of the offence either on a complaint or a report of the police officer. The Court further held that "since the first information report is not a complaint there is no question of Magistrate taking cognizance of the offence without receiving the first information report (F.I.R.)". The first information report cannot be a charge relating to an offence. Therefore the view of the District Collector is perfectly justified.”

11. As could be seen, subsequently placing reliance on the above judgments, another learned single Judge of this Court rendered an unreported judgment dated 19.03.2008 in W.P.(C) No. 7983 of 2008 and batch holding as follows:

“Therefore, unless a charge has been framed by the court for an abkari offence against a person in terms of Section 211 of the Cr.P.C., he cannot be excluded from being granted licence, on a ground referable to any allegation against him as to the commission of any offence punishable under the abkari law. It is so declared.”

12. Though the learned Government Pleader has contended that mere olfactory evidence as to the nature of substance is sufficient to register a crime, I am afraid, in terms of Rule 5(3)(i) of the Rules, mere registration of a crime is not sufficient. In other words, even in the absence of any chemical analysis, unless a licensee is charged with a particular offence by taking cognizance of it, the prosecution cannot be said to be pending.

In the light of the definitive pronouncements of this Court stated above, I do not see any valid ground for the second

respondent to refuse to renew the licence of the petitioners, provided they comply with all other statutory parameters. Insofar as the issue of non-remittance of the advance toddy workers' welfare fund and other fees is concerned, the learned counsel for the petitioners has submitted that there was no occasion for them to commit any default in that regard, inasmuch as the second respondent has rejected the application at the threshold.

Under these circumstances, it is made clear that the second respondent is required to process the application for renewal without reference to the crime said to have been registered against the petitioners, but only on the petitioners' compliance with the other statutory parameters. It is further made clear that the respondent authority may expedite the process and conclude the same as early as possible.

sd/- DAMA SESHADRI NAIDU, JUDGE.

