

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 6945 of 2011 (P)

PETITIONER : -

SALMA P.P., DO.MOIDEEN,
PULPARAMBIL HOUSE, VAVADE P.O.,
KODUVALLY, KOZHIKODE.

BY ADVS.SRI.P.VKUNHIKRISHNAN
SRI.HANSON.P.MATHEW

RESPONDENTS : -

1. DEPUTY EXCISE COMMISSIONER,
PALGHAT-678001.
2. ADDITIONAL COMMISSIONER OF EXCISE (ENFORCEMENT),
THIRUVANANTHAPURAM-695001.
3. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM-695001.
4. SUB INSPECTOR OF POLICE,
OTTAPALAM POLICE STATION,
OTTAPALAM-679101.
5. MANSOOR, S/O.BASHEER,
ARETTAKKUNNUMMEL,
ANDONDA, P.O.THAMARASSERY,
KOZHIKODE DISTRICT-673573.

BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR
R5 BY ADV.SRI.SUNIL NAIR PALAKKAT
R5 BY ADV.SMT.R.LEELA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPY OF THE REGISTRATION CERTIFICATE OF MARUTI ALTO CAR BEARING No. KL 57A-4485 IN THE NAME OF THE PETITIONER DATED 12.8.2008.

EXHIBIT P2 : COPY OF THE PAYMENT SCHEDULE ISSUED BY THE HDFC BANK TO THE PETITIONER FOR THE PERIOD 01.01.2010 TO 22.06.2010.

EXHIBIT P3 : COPY OF THE AGREEMENT EXECUTED BETWEEN THE PETITIONER AND THE 5th RESPONDENT DATED 16.7.2009.

EXHIBIT P4 : COPY OF THE FIR IN CRIME No. 528/09 DATED 28.7.2009 OF THE S.I. OF POLICE, OTTAPALAM.

EXHIBIT P5 : COPY OF THE APPLICATION SUBMITTED BY THE 4th RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, OTTAPALAM DATED 4.8.2009.

EXHIBIT P6 : COPY OF THE FIR No. 371/2009 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, THAMARASSERY.

EXHIBIT P7 : COPY OF THE ORDER No. P3-5215/09 DATED 17.3.2010 OF THE DEPUTY EXCISE COMMISSIONER, PALAKKAD.

EXHIBIT P8 : COPY OF THE ORDER No. 57/APL/2010/AC(X) DATED 17.12.2010 OF THE ADDITIONAL COMMISSIONER OF EXCISE (ENFORCEMENT) THIRUVANANTHAPURAM DATED 17.12.2010.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 6945 of 2011

Dated this the 11th day of November, 2015

JUDGMENT

The petitioner, the owner of a Maruti Alto Car, has questioned Exhibits P7 and P8 orders passed by respondents 1 and 2 confiscating the petitioner's vehicle allegedly for committing an abkari offence.

2. The facts in brief are that on 28.07.2009, the fourth respondent, in his territorial limits, seized the petitioner's vehicle from the fifth respondent and registered an abkari crime against the fifth respondent and another person in Crime No. 528/09 under Section 55(a) of the Abkari Act.

3. In the course of time, when the vehicle was produced before the first respondent, the said authority exercising his powers under Section 67B confiscated the vehicle through Exhibit P7 order dated 17.03.2010. Aggrieved, the petitioner, who is not an accused in the crime, filed a statutory appeal before the second respondent, who in turn dismissed the appeal through Exhibit P8, thereby confirming Exhibit P7 order of the primary authority. Eventually, assailing Exhibit P8 order, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner has drawn my attention to Exhibit P3 to contend that the petitioner has leased out the vehicle to the fifth respondent with a specific covenant that it shall not be put to any illegal use. He has further submitted that the fifth respondent, as it later turned out, had used the vehicle illegally. The petitioner has also lodged Exhibit P5 police complaint, which is said to be still pending.

5. The learned counsel has eventually submitted that though the appellate authority in Exhibit P8 has held that Exhibit P3 lease deed cannot be relied on, he has not supplied any cause or reason therefor.

6. Summing up his submissions, the learned counsel has urged this Court to allow the writ petition because, following Section 67(c) of the Act, the petitioner has taken every precaution while letting out the vehicle. In other words, the petitioner has neither knowledge of nor complicity in the alleged crime committed by the fifth respondent.

7. The learned Government Pleader, on his part, has submitted that the petitioner initially got the vehicle registered for personal use. According to him, Exhibit P3 alleged lease

deed is against law. In the end, he has submitted that neither Exhibit P7 nor Exhibit P8 suffers from any legal infirmity to be interfered with.

8. Heard the learned counsel for the petitioner and the learned counsel for the fifth respondent, as well as the learned Government Pleader, apart from perusing the record.

9. This Court, through a plethora of precedents, has interpreted Section 67(c) of the Act. Invariably, the finding of the Court is that once the owner of the vehicle has taken reasonable care while letting out his vehicle to ensure that it has not been abused, he cannot be blamed for the consequences. In other words, if the end user of the vehicle is guilty of an offence unless the owner himself has any complicity in the crime or at least has failed to take reasonable care to ensure that the vehicle has not been abused, he cannot be made to suffer the adverse consequences.

10. Though it is the specific contention of the learned Government Pleader that Exhibit P3 is in violation of the provisions of the Motor Vehicles Act, the fact, nevertheless, remains that while considering any penal provisions, the illegality of a document under a different enactment cannot rob

it of its binding nature. Simply stated, the petitioner letting out his vehicle in violation of the provisions of the Motor Vehicles Act may attract the consequences that have been provided for under the said Act, but he cannot be made to suffer under a different enactment where there is no express prohibition. All that the Abkari Act contemplates is that the owner of the vehicle should not be a party to the crime or at least should not have knowledge concerning the same.

In the light of the ratio of this Court in **Suraj K.R. v. Excise Inspector, Thrithala and Others**¹ this Court disposes of the writ petition setting aside Exhibit P8. Consequently, the respondent authorities are directed to release the petitioner's vehicle forthwith. No order as to costs.

DAMA SESHADRI NAIDU
JUDGE

DMR/-

¹ 2013(2) KHC 211