

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 21ST DAY OF OCTOBER 2015/29TH ASWINA, 1937

WP(C).No. 12135 of 2013 (N)

PETITIONER:

BENNY JOSE, AGED 46 YEARS,
S/O. JOSEPH, KONGOLAYIL HOUSE,
THAZHAKKOTTU AMSOM AND DESOM,
KOZHIKODE TALUK AND DISTRICT.

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

RESPONDENTS:

1. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
2. THE DEPUTY COMMISSIONER OF EXCISE,
KOZHIKODE - 673 001.
3. THE CIRCLE INSPECTOR OF EXCISE,
KOZHIKODE - 673 001.
4. THE EXECISE INSPECTOR,
EXCISE RANGE, KUNNAMANGALAM
KOZHIKODE DISTRICT - 673 571.
5. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES (A) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.

R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
21-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT-P1-TRUE COPY OF THE ORDER NO. XA1 - 5324/2013 DATED 04/05/2013 PASSED BY THE IST RESPONDENT.

EXHIBIT-P2-TRUE COPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 19/10/2012 ISSUED BY THE ASST. CHEMICAL EXAMINER TO GOVERNMENT OF KERALA, KOZHIKODE.

EXHIBIT-P3-TRUE COPY OF THE CRIME AND OCCURENCE REPORT IN C.R 23/2013 OF KUNNAMANGALAM EXCISE RANGE.

EXHIBIT-P4-TRUE COPY OF THE REPLY DATED 09/05/2013 SENT BY THE PETITIONER TO THE IST RESPONDENT.

EXHIBIT-P5-TRUE COPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 26/04/2013 ISSUED BY THE ASSISTANT CHEMICAL EXAMINER TO GOVERNMENT OF KERALA, KAKKANAD, ERNAKULAM.

EXHIBIT-P6-TRUE COPY OF THE ORDER NO. XA 7 - 32658/2010 DATED 20/05/2011 PASSED BY THE IST RESPONDENT.

EXHIBIT-P7-TRUE COPY OF THE ORDER NO. XA 6 - 13768/2012 DATED 21/08/2012 PASSED BY THE EXCISE COMMISSIONER.

EXHIBIT-P8-TRUE COPY OF THE ORDER DATED 13/01/2012 IN W.P(C) 1070/2012 PASSED BY THIS COURT.

EXHIBIT-P9-TRUE COPY OF THE ORDER DATED 25/01/2012 IN W.P(C) 2171/2012 IN W.P.(C) NO. 2171/2012 PASSED BY THIS HON'BLE COURT.

EXHIBIT-P10-TRUE COPY OF THE ORDER DATED 24/07/2012 IN W.P(C) 17233/2012 PASSED BY THIS HON'BLE COURT.

EXHIBIT-P11-TRUE COPY OF THE ORDER DATED 06/11/2012 IN W.P(C) 26080/2012 PASSED BY THIS HON'BLE COURT..

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 12135 of 2013 (N)

Dated this the 21st day of October, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

2. The petitioner, the licensee of all the toddy shops included in Group No.I in Kunnamangalam Excise Range of Kozhikode Division, assails in this writ petition Ext.P1 order of suspension-cum- cancellation of licence. Ext.P1 is said to have been issued as a result of the crime registered against the petitioner for the offence under Section 57(a) of the Abkari Act.

3. The learned counsel for the petitioner has submitted that in the course of time, at the behest of the petitioner, when the second sample was sent for chemical analysis, the result was in favour of the petitioner, as is evident from Ext.P5 order of the chemical analysis.

4. The learned counsel has passed across the Bar what is said to be an order dated 25.03.2014 in C.M.P. No. 2318 of 2014 in C.C. No. 1253 of 2013 passed by the Judicial First Class Magistrate,

Kunnamangalam, discharging the petitioner and another accused. The trial court has observed that in the light of the second sample's result, which has not been discredited, the crime cannot be sustained.

In the light of the ratio laid down by this Court in *Joshy George v. State of Kerala*¹ and *Rajappan & another v. State of Kerala*², this Court allows the writ petition applying the ratio of the aforesaid decisions, thereby setting aside Ext.P1.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

1 2011(4) KHC 818

2 2012(2) KHC 657

