

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 21756 of 2005 (M)

PETITIONER:

K.RAJESH, AGED 30 YEARS, S/O.NARAYANAN,
RAJESH NIVAS, CHERPULASSERY,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.C.C.THOMAS (SR.)

RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE,
CHERPULASSERY POLICE STATION,
PALAKKAD DISTRICT.
2. THE ASST. EXCISE COMMISSIONER,
PALAKKAD.
3. THE ADDL. EXCISE COMMISSIONER,
PUBLIC OFFICE BUILDING,
THIRUVANANTHAPURAM.
4. THE COMMISSIONER OF EXCISE,
EXCISE COMMISSIONERATE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.RAMAPRASAD UNNI.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 21756/2005

PETITIONER'S EXHIBITS:

EXT. P1 PHOTOCOPY OF THE TODDY TRANSPORT PERMIT NO.P5-2163/2004 DATED 1.4.2004 ISSUED BY THE SECOND RESPONDENT

EXT. P2 PHOTOCOPY OF THE TODDY TRANSPORT PERMIT NO.P5-2164/04 DATED 1.4.2004 ISSUED BY THE SECOND RESPONDENT

EXT. P3 PHOTOCOPY OF THE REPLY STATEMENT DATED 8.12.2004 SUBMITTED BEFORE THE SECOND RESPONDENT

EXT. P4 PHOTOCOPY OF THE ORDER NO.P3-3953/04 DATED 27.12.2004 PASSED BY THE SECOND RESPONDENT

EXT. P5 PHOTOCOPY OF THE ORDER NO.04/APL/2005/AC(X) DATED 14.1.2005 PASSED BY THE THIRD RESPONDENT

EXT. P6 PHOTOCOPY OF THE ORDER NO.P3-3953/04 DATED 18.2.2005 PASSED BY THE SECOND RESPONDENT

EXT. P7 PHOTOCOPY OF THE ORDER NO.04/APL/2005/AC(X) DATED 8.5.2005 PASSED BY THE THIRD RESPONDENT

EXT. P8 PHOTOCOPY OF THE LETTER DATED 18.6.2005 ISSUED BY THE SECOND RESPONDENT

RESPONDENT'S EXHIBITS:

EXT.R2(a) TRUE COPY OF THE ANALYSIS REPORT NO.4/42 DATED 20.8.04 OF THE ASST. CHEMICAL EXAMINER TO GOVT., ERNAKULAM

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.21756 of 2005 M

Dated this the 28th day of July, 2015

JUDGMENT

The petitioner, the registered owner of a motor vehicle bearing No.KL-9/E-7304, has assailed Exhibit P7 order of confiscation of his vehicle under Section 67B of the Abkari Act.

2. Succinctly stated, the facts are that the petitioner hired out his vehicle to two Abkari licencees for the purpose of transporting toddy from Chittur to Cherupulassery. Exhibits P1 and P2, the permits for transportation, have the number of the vehicle reflected in them as the authorized vehicle for transportation.

3. On 13.04.2004, the Police intercepted the vehicle while it was transporting toddy and found on inspection that apart from transporting toddy, the vehicle was also carrying

seventy litres of spirit, a prohibited substance. The said finding on the part of the police resulted in registration of Crime No.85/2004 for the alleged offence under Section 55 (a) of the Abkari Act ('the Act' for brevity). As can be seen from the record, the police arrested and arrayed the three inmates of the vehicle as accused 1 to 3; having found that the vehicle belonged to the petitioner, they also arrayed the petitioner as the fourth accused, apart from arraying the licencees as accused 5 and 6.

4. In terms of Section 67B of the Act, the Investigating Officer handed over the vehicle to the Authorized Officer, the second respondent, for the purpose of confiscation. In turn, the second respondent issued a show cause notice to the petitioner, in response to which the petitioner submitted Exhibit P3 reply.

5. As a matter of subsequent development, the vehicle was released temporarily to the custody of the

petitioner on his furnishing a bank guarantee for ₹ 1,75,000/-, the said amount being assessed as the market value of the vehicle. Later, having held a hearing, the second respondent passed Exhibit P4 order under Section 67B of the Act, confiscating the petitioner's vehicle.

6. Aggrieved, when the petitioner filed a statutory appeal before the third respondent under Section 67A, it resulted in the remand of the matter to the second respondent, through Exhibit P5 order. On remand, nevertheless, the second respondent through Exhibit P6 reiterated the earlier Exhibit P4 order of confiscation. Though the petitioner once again filed a statutory appeal questioning Exhibit P6, the said appeal was dismissed through Exhibit P7 order. Resultantly, the authorities have issued the consequential Exhibit P8 order requiring the petitioner to surrender the vehicle to the authorities. Under these circumstances, the petitioner has filed the present

writ petition.

7. Sri.Karthikeyan, the learned counsel for the petitioner, has submitted that the petitioner has given the vehicle on hire to the Abkari licencees and that Exhibits P1 and P2 transport permits clearly reflected the number of the vehicle. According to him, the petitioner has taken every precaution to ensure that the vehicle was given on hire for a legitimate purpose. The learned counsel would further contend that so long as the authorities could not establish, as it is a fact, that the petitioner has knowledge of, or has connived with, the other accused in committing the offence of transporting illicit liquor or any contraband, merely because the petitioner is the owner of the vehicle, his property, albeit the very vehicle, cannot be subjected to confiscation.

8. The learned counsel has also drawn my attention to Section 67C(2) of the Act to contend that it is not an

invariable statutory mandate that under all circumstances the vehicle is to be confiscated. According to the learned counsel, it is only an enabling provision empowering the authorities to exercise the discretion concerning the seizure of the vehicle, but only under circumstances warranting such seizure.

9. Eventually the learned counsel has stressed that even the very crime registered against the petitioner and others has also ended in acquittal, and attained finality. Placing reliance on **Suraj K.R. v. Excise Inspector, Thrithala and Others**¹, the learned counsel contends that once it is not proved that the owner of the vehicle has the knowledge of, or that he has any direct part in, transporting the contraband, more particularly once he has ensured that the vehicle has been given on hire to the persons who have got proper licence to transport the liquor, the vehicle

¹ 2013 (2) KHC 211

cannot be confiscated.

10. Per contra, the learned Government Pleader has strenuously contended that the facts of illegal transportation of spirit and the confiscation of the vehicle are beyond dispute. He has further contended that the petitioner, being the registered owner, has failed to prove that the vehicle was used for carrying the spirit without his knowledge and connivance. He has finally submitted that Exhibit P7 order does not suffer from any legal infirmity to be interfered with.

11. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the records.

12. Indeed, the facts are not in dispute and the issue to be determined falls in a narrow compass. The petitioner, being the owner of a motor vehicle, gave it on hire to the licencees of toddy shops for the purpose of transporting

toddy. Indisputably, Exhibits P1 and P2 permits duly reflected the number of the vehicle as the authorised vehicle for transportation. To that extent, there is no cavil that the petitioner has not let out his vehicle for any illegal purpose or object.

13. There is no gainsaying the fact that under Section 67B of the Act, the police authorities have got every power to confiscate the vehicle. It is further to be seen that the very Section 67C(2) of the Act provides that the power of confiscation is discretionary and the authorities can exercise it only under circumstances warranting confiscation.

14. Through a catena of judgments, this Court has held that, to have the vehicle confiscated, it ought to have been established that the owner of the vehicle has prior knowledge or, in the alternative, he is a party to the offence, which, thus, connotes his active involvement. Once it is not established that the owner of the vehicle has knowledge or

that he has connived with the persons who are illegally transporting any contraband, merely because his vehicle was involved in the offence, he cannot be penalised.

15. Indeed, the cardinal constitutional principle mandated under Article 19(1)(g) of the Constitution of India cannot be lost sight of. The petitioner's letting out his vehicle on hire is a legitimate business. I hasten to add that such constitutional protection to right to carry on business does not, ipso facto, give licence to a person to commit offence under its cover.

16. In the present instance, a perusal of the entire record does not lead to even a remote conclusion that the petitioner has been guilty of illegally transporting any prohibited substance, not even that he had any complicity. In fact, he was made an accused in the crime registered pursuant to the seizure of the vehicle, only because he was the owner of the vehicle. It is also an incontrovertible fact

that the criminal proceedings in Crime No.85/2004 eventually ended in acquittal of the accused, including the petitioner, though the factum of acquittal is not a compelling factor for the release of the vehicle.

17. In the above factual background, it is requisite to examine the ratio in Suraj K.R. (supra), in which this Court squarely addressed the issue of knowledge or complicity on the part of the owner of the vehicle and, in that process, held thus:

“Of course it is for the petitioner to prove that he took all reasonable and necessary precautions against the use of his vehicle, in violation of the provisions of the Abkari Act. I am of opinion that the precaution that normally an owner of a lorry can take in respect of transport of toddy is that the transport is supported by a valid permit. It is not disputed before me that for the transport in question the licensee has obtained a valid permit. The only allegation in respect of the transport is that the toddy so transported contained traces of chloral hydrate. It is plain for anybody to see that the owner of a lorry who hires out his vehicle for transport of toddy cannot in addition to seeing that the transport is in accordance with valid permit

for such transport, take the trouble of taking sample from the toddy and testing it in the chemical laboratory to see that it does not contain any adulterating material. Of course, if there was an additional allegation that the petitioner was party to the adulteration as well, things would have been different. But, the respondents have not raised such an allegation at all. In fact, it is submitted at the bar that even the licencees and others who were prosecuted under the Abkari Act, were acquitted holding that chloral hydrate was, at the relevant time, not a prohibited substance, the presence of which in the toddy was the reason for holding that the toddy is adulterated. Of course the fact that the petitioner was the brother of the licensee may have given some suspicion of the complicity of the petitioner also in the transport. But, suspicion cannot take the place of proof. Simply because the owner of the lorry was the brother of the licensee under law there is no presumption that the brother also must have been aware of the illegality of the transport.”

(emphasis added)

18. Going by the above ratio, it can safely be concluded that the petitioner has hired out his vehicle for a legitimate purpose, as is evident from Exhibits P1 and P2 permits. There is no material to support the contention, much less to conclude, that the petitioner has either

knowledge concerning the illegal transportation or has connived in that illegal business.

In the facts and circumstances, I am of the considered opinion that Exhibit P7 order is unsustainable and is accordingly set aside. As a consequence, the writ petition is allowed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

C.R.