

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 15385 of 2010 (W)

PETITIONER:

P.P.VINEESH, AGED 30 YEARS,
S/O. PADMANABHAN, PATHIYAPARAMBIL HOUSE, MANNAM.P.O.,
NORTH PARUR, ERNAKULAM DISTRICT.

BY ADVS.SRI.NIREESH MATHEW
SRI.C.C.THOMAS (SR.)
SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENTS:

1. THE SUB INSPECTOR OF POLICE,
NEDUMBASSERY POLICE STATION, ERNAKULAM DISTRICT.
2. THE DEPUTY EXCISE COMMISSIONER,
KACHERIPADY, ERNAKULAM.
3. THE ADDL. EXCISE COMMISSIONER,
EXCISE HEADQUARTERS, NANDAVANAM, THIRUVANANTHAPURAM.
4. THE COMMISSIONER OF EXCISE,
EXCISE HEADQUARTERS, NANDAVANAM, THIRUVANANTHAPURAM.

R,R1 TO R4 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : PHOTOCOPY OF THE ORDER NO.E7-2134/2009 DATED 29.09.2009 PASSED BY THE 2ND RESPONDENT.
- EXT.P2 : PHOTOCOPY OF THE APPEAL MEMORANDUM DATED 12.11.2009 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.
- EXT.P3 : PHOTOCOPY OF THE ORDER NO.34(B)/APL/2005/AC(X) DATED 20.02.2006 PASSED BY THE ADDL.EXCISE COMMISSIONER, THIRUVANANTHAPURAM UNDER SECTION 67 -E OF THE ABKARI ACT IN A SIMILAR CASE OF THE PETITIONER.
- EXT.P4 : PHOTOCOPY OF the ORDER NO.65/APL/2009/AC(X) DATED 24.03.2010 PASSED BY THE 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 15385 of 2010 (W)

Dated this the 3rd day of November, 2015.

JUDGMENT

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

2. Initially, the petitioner's vehicle had been confiscated along with three other vehicles in relation to an abkari offence. The petitioner's effort to have the vehicle released has met with failure, since respondents 2 and 3 concurrently through Exts.P1 and P4 orders refused his request. Hence, the writ petition.

3. As a matter of subsequent developments, the learned counsel for the petitioner submits that in the crime, apart from the petitioner, three other persons, the owners of the remaining vehicles, had been arrayed as accused. Nevertheless, at the time of filing the challan/charge-sheet, the names of the three accused, the owners of the other three vehicles, were removed from the array of the accused. The learned counsel has further submitted that the petitioner, too, later got the crime compounded and paid the penalty.

4. The learned counsel has also drawn my attention to the judgment of this Court in W.P.(C) No. 15185 of 2010 involving

another vehicle seized along with that of the petitioner. Evidently, this Court has interfered with the order of confiscation and ordered the release of the vehicle in the said writ petition. According to him, the ratio of the judgment in W.P. (C) No.15185 of 2010 squarely applies to the present writ petition, because the vehicles in both the writ petitions have been confiscated under identical circumstances.

5. The learned Government Pleader, in response to the submissions made by the learned counsel for the petitioner, has submitted that insofar as the vehicles are concerned, all the four vehicles have been seized and later confiscated under similar circumstances.

6. In the light of the ratio laid down by this Court in the judgment dated 12.08.2014 in W.P.(C) No. 15185 of 2010, more particularly given the fact that the vehicle in that writ petition and the one in the present writ petition have been confiscated under identical circumstances, this Court allows the present writ petition as well. Consequently, the second respondent is directed to release the vehicle to the custody of the petitioner forthwith. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

