

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937

WP(C).No. 18168 of 2010 (U)  
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PETITIONER:  
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RATHINAM, AGED 45, S/O.VELU,  
698/8, THANNIKUDIYIL HOUSE, CHINNAKANAL P.O.,  
CHINNAKANAL VILLAGE, IDUKKI DISTRICT.

BY ADVS.SRI.JAISON JOSEPH  
SRI.M.N.SANJITH

RESPONDENTS:  
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1. STATE OF KERALA, REP.BY  
SUB INSPECTOR OF POLICE, SANTHAMPARA POLICE STATION,  
SANTHAMPARA.
2. THE DEPUTY EXCISE COMMISSIONER,  
IDUKKI.
3. THE ADDITIONAL EXCISE COMMISSIONER  
THIRUVANANTHAPURAM.

R,R1-3 BY ADV. SRI.G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
16-11-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

: 2 :

**APPENDIX**

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE PHOTOCOPY OF THE PAY-IN-SLIP OF TREASURY SAVINGS BANK DATED 09.09.2008.
- EXT.P2 : THE WRITTEN COPY OF CONFISCATION ORDER OF RESPONDENT NO.2 BEARING NO.ID3396/2008 DATED 04.11.2008.
- EXT.P3 : TRUE POTOCOPY OF THE APPEAL MEMORANDUM.
- EXT.P4 : TRUE PHOTOCOPY OF THE ORDER BEARING NO. 56/APL/2009/AC(X) DATED 17.03.2010.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

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W.P. (C) No. 18168 of 2010 (U)  
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Dated this the 16<sup>th</sup> day of November, 2015.

JUDGMENT

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

2. The petitioner, the owner of a jeep bearing registration No. KL-06 A 2320, has filed the present writ petition questioning Ext.P4 order of the appellate authority, who confirmed Ext.P2 order of confiscation passed by the primary authority.

3. The facts in brief are that on 15.07.2008, the Sub Inspector of Police, Santhampara Police Station, seized the petitioner's vehicle having found that the inmates of the vehicle were 'transporting' 500ml of arrack. Having arrested two persons, the said Sub Inspector of Police registered Crime No. 196 of 2008 under Section 55(a) of the Abkari Act ('the Act')

4. When the vehicle was produced before the Deputy Excise Commissioner, Idukki, the said authority, exercising his powers under Section 67B(2) of the Act, passed Ext.P2 order of confiscation.

Aggrieved, the petitioner filed Ext.P3 appeal before the Additional Commissioner of Excise, Trivandrum, the appellate authority. Eventually, when the appellate authority passed Ext.P4 order affirming the findings of the primary authority in Ext.P2, the petitioner has filed the present writ petition.

5. The learned counsel for the petitioner has submitted that the petitioner, the owner of the vehicle, had no knowledge about the alleged crime. He has further submitted that when the vehicle was given on hire, a passenger on board, without the petitioner's knowledge, could have carried a bottle of arrack for his personal consumption. According to the learned counsel, first, it cannot be treated as transport of liquor or any contraband. Second, so long as the petitioner, the owner of the vehicle, had no knowledge about the alleged transportation, he ought not to have been made to suffer.

6. In elaboration of his submissions, the learned counsel would contend that the petitioner's vehicle worth about ₹ 60,000/- had been confiscated by the authorities for the alleged offence, which the petitioner has neither any complicity in nor any knowledge of. In this regard, the learned counsel has placed reliance on Suraj K.R v. Excise

Inspector, Thithala and others<sup>1</sup>.

6. The learned Government Pleader, on the other hand, has submitted that the vehicle was driven by none other than the petitioner's son. According to him, it is deemed that the petitioner has sufficient knowledge of, if not complicity in, that crime.

7. It is not in dispute that the petitioner is not an accused in the crime. Further, it is a vehicle registered as a taxi and was at the time of inspection found to be plying on route. The mere fact that the driver of the vehicle happened to be the son of the vehicle owner could not be a vitiating factor, and it by no means leads to any inference that the petitioner had knowledge about the alleged crime.

8. Indeed, there is no quarrel concerning the proposition that in terms of Section 67C of the Act, burden is on the owner of the vehicle to establish by way of positive evidence that, in the first place, he has no complicity in the crime; in the second, the offence took place despite his best efforts to ensure that the vehicle had not been abused. In other words, he has no knowledge.

9. In this context, this Court in Suraj has held as follows:

“4. Of course it is for the petitioner to prove that he took all reasonable and

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<sup>1</sup> 2013(2) KHC 2011

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 had 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 licensees 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."

10. Going by the ratio of the above decision, and given the fact that the quantity was 500 ml, the arrack found to be in possession of the passenger could not, to me, amount to illegal 'transportation' in a vehicle. Even otherwise, the confiscation of vehicle, in my considered view, is disproportionate to the alleged offence, regarding which the petitioner admittedly had no knowledge.

11. The record further reveals that having filed an appeal, the

petitioner has not taken part in the adjudication before the Additional Excise Commissioner, the appellate authority. In that context, the said authority has observed in Ext.P4 that the vehicle was driven by the owner-cum-driver, which observation, ex facie, is incorrect.

In the facts and circumstances, the writ petition is allowed. Since the vehicle is in the custody of the petitioner on his having deposited the requisite amount—the value of the vehicle—it is further directed that the respondent authorities shall return to the petitioner forthwith the amount thus deposited. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

