

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 20144 of 2010 (P)

PETITIONER : -

P.B.BENSON, AGED 28 YEARS,
S/O.BAHULEYAN, KOZHITHARA HOUSE,
PATTANAKKAD, CHERTHALA, ALAPPUZHA DISTRICT.

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

RESPONDENTS : -

1. THE EXCISE INSPECTOR,
EXCISE RANGE OFFICE, ERNAKULAM.
2. THE DEPUTY COMMISSIONER OF EXCISE,
ERNAKULAM.
3. THE ADDL.COMMISSIONER OF EXCISE,
OFFICE OF THE ADDL.EXCISE COMMISSIONER,
EXCISE HEAD QUARTERS,
NANDAVANAM, THIRUVANANTHAPURAM.
4. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
EXCISE HEAD QUARTERS,
NANDAVANAM, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

- EXHIBIT P1 : COPY OF THE TODDY TRANSPORT PERMIT No.156/2008-09/ID-I HY
DATED 01.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P2 : COPY OF THE TODDY TRANSPORT PERMIT No.159/2008-09/ID-I HY
DATED 01.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P3 : COPY OF THE TODDY TRANSPORT PERMIT No.154/2008-09/ID-I HY
DATED 01.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P4 : COPY OF THE TODDY TRANSPORT PERMIT No.405/2008-09/ID-I HY
DATED 02.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P5 : COPY OF THE TODDY TRANSPORT PERMIT No.406/2008-09/ID-I HY
DATED 02.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P6 : COPY OF THE TODDY TRANSPORT PERMIT No.404/2008-09/ID-I HY
DATED 02.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P7 : COPY OF THE TODDY TRANSPORT PERMIT No.407/2008-09/ID-I HY
DATED 02.04.2008 ISSUED BY THE THEN ASST. EXCISE
COMMISSIONER, PALAKKAD.
- EXHIBIT P8 : COPY OF THE CASH BILL DATED 28.8.2008 ISSUED BY THE PRINCE
AUTOMOBILES, THURAVOOR.
- EXHIBIT P9 : COPY OF THE CRIME AND OCCURRENCE REPORT IN CR No.43/2008
REGISTERED BY THE 1st RESPONDENT.
- EXHIBIT P10 : COPY OF THE REPLY TO SHOW CAUSE NOTICE DATED 21.11.2008
SUBMITTED BEFORE THE THEN ASST EXCISE COMMISSIONER,
ERNAKULAM.
- EXHIBIT P11 : COPY OF THE ORDER No.E7-7365/08 DATED 30.1.2010 PASSED BY
THE 2nd RESPONDENT.
- EXHIBIT P12 : COPY OF THE APPEAL MEMORANDUM DATED 8.3.2010 FILED
BEFORE THE 3rd RESPONDENT.

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EXHIBIT P13 : COPY OF THE ORDER No.27/APL/2010/AC(X) DATED 8.6.2010
PASSED BY THE 3rd RESPONDENT.

EXHIBIT P14 : COPY OF THE ORDER No.6/APL/03/AC(X) DATED 28.4.2003 PASSED
BY THE 3rd RESPONDENT.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 20144 of 2010

Dated this the 18th day of September, 2015

JUDGMENT

The petitioner is the registered owner of a motor vehicle (MAXX Pick Up Van) bearing registration No.KL-04/V 2018. For an alleged abkari offence under Section 56(b) of the Abkari Act ('the Act'), through Exhibit P11 the petitioner's vehicle was subjected to confiscation. Later, in appeal, the said order stood confirmed through Exhibit P13. Assailing the order of the 3rd respondent in appeal, the petitioner has filed the present writ petition.

2. The facts in brief are that the Circle Inspector of Excise on 28.08.2008 seized the petitioner's vehicle while it was transporting an excess quantity of coconut toddy without valid documents. Having arrested the persons found in the vehicle, the Circle Inspector of Excise registered an abkari case in Crime No.43/08 for the offence under Section 56(b) of the Act.

3. Later, the petitioner's vehicle was subjected to confiscation under Section 67B of the Act. As can be seen from the record, it was released temporarily on the petitioner's

furnishing a bank guarantee for Rs.5,00,000/-.

4. In the course of time, on petitioner's application for the release of the vehicle permanently, the second respondent through Exhibit P11 refused his claim. Aggrieved, the petitioner filed an appeal before the third respondent, who, in fact, confirmed the second respondent's Exhibit P11 order of confiscation. Thus, under those circumstances, the petitioner has approached this Court.

5. The learned counsel for the petitioner has submitted that the licensee has Exhibits P1 to P7 permits; the petitioner's vehicle is the authorized vehicle, as has been shown in all the seven permits. According to the learned counsel, on the day when the vehicle was inspected, it was found carrying an excess quantity of toddy. In his explanation, the petitioner submitted before the authorities that the other authorized vehicle shown in Exhibits P1 to P7 had also been engaged in transportation. However, en route it broke down compelling the staff of the licensee to transfer the toddy from the other vehicle to the petitioner's.

6. Observations in Exhibits P11 and P13 are to the effect that neither the Driver nor the route Manager could properly

explain why the petitioner's vehicle had been carrying excess quantity. To negate those observations, the learned counsel firstly contended that they could not properly explain the situation to the authorities for fear of prosecution. He has further, in the alternative, submitted that the offence, if it were, is only technical in nature.

7. The learned counsel has laid emphasis on the fact that it is not the case of transporting liquor illegally without any valid licence; it is at best a matter of excess quantity, which is a minor infraction of the license conditions. In this regard, the learned counsel has drawn my attention to a judgment rendered by this Court, dated 13.07.2012, in W.P. (C) No.4172/2008.

8. In elaboration of his submissions, the learned counsel would contend that under identical circumstances in the judgment referred to above, this Court has observed that the infraction, if any, is only technical. It being a minor offence, it is held, confiscation of a vehicle worth lacks of rupees is uncalled for. Under those circumstances this Court has set aside the impugned orders of confiscation, submits the learned counsel.

9. The learned Government Pleader, in tune with the averments in the counter affidavit, has submitted that the whole excuse of the breakdown of another vehicle has been invented only to get over the statutory limitations. He has submitted that the licensee deliberately transported excess quantity thereby using the petitioner's vehicle for an unauthorized purpose. According to him, Exhibit P13 cannot be interfered with, as it has rightly affirmed Exhibit P11 order of confiscation.

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

11. Indeed, it is not in dispute that the petitioner's vehicle has been duly authorized, and its number is found reflected in Exhibits P1 to P7 permits. The fact, further, remains that at the time of inspection, the Driver and the route Manager on behalf of the licensee could show Exhibits P1 to P4 permits. As it is not in dispute that in terms of Exhibits P1 to P7 permits, the licensee is entitled to transport toddy of 1920 litres, the toddy found in excess was about 30 litres. Thus, it

is a matter of carrying excess quantity, rather than carrying any contraband.

12. Given the statutory scheme under Section 67B of the Act, I am of the considered opinion that it is at best a minor offence for which confiscating the vehicle permanently amounts to a disproportionate punishment inflicted on the petitioner, who in the first place has nothing to do with the transport of the toddy. In other words, the petitioner as the owner of the vehicle has lent it on hire to the licensee, who has, evidently, indulged in transporting excess quantity without the petitioner's knowledge, however.

13. Under similar circumstances, this Court in *P.K.Babu*, an unreported judgment referred to above, has felt that confiscation of the vehicle on a permanent basis is disproportionate to the gravity of the offence. This Court in *Rajesh K. v. Sub Inspector of Police, Palakkad and Others*¹ has reiterated the same proposition.

In the facts and circumstances, I do find merit in the contention of the learned counsel for the petitioner and accordingly set aside Exhibit P13 with a consequential direction

¹ 2015 (4) KHC 253

to the respondents to release the petitioner's vehicle permanently. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-