

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 21214 of 2011 (B)

PETITIONER:

ANILKUMAR, AGED 35 YEARS,
S/O.PURUSHOTHAMAN,
KAITHOTHA HOUSE, PALARIVATTOM,
KOCHI 682 025.

BY ADVS.SRI.N.K.MOHANLAL
SRI.K.S.DILU CHAKRAVARTHI

RESPONDENTS:

1. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
2. ADDITIONAL EXCISE COMMISSIONER,
THIRUVANANTHAPURAM 695 005.
3. DEPUTY EXCISE COMMISSIONER,
PALAKKAD.
4. CIRCLE INSPECTOR OF POLICE,
ALATHUR POLICE STATION, PALAKKAD.
5. STATE OF KERALA REPRESENTED BY SECRETARY
TO DEPARTMENT OF EXCISE, TRIVANDRUM 695 001.

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 21214/2011

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE ORDER OF THE SECOND RESPONDENT DATED 26.5.2011

EXT. P2 TRUE COPY OF ORDER OF THIRD RESPONDENT, DEPUTY COMMISSIONER OF EXCISE CONFISCATING THE VEHICLE

EXT. P3 TRUE COPY OF REPRESENTATION DATED 13.6.2011 BEFORE THE SECOND RESPONDENT

RESPONDENT'S EXHIBITS:

EXT. R2(a) A TRUE COPY OF THE REJECTION ORDER

EXT. R2(b) A TRUE COPY OF THE INITMATION

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.21214 of 2011 B

Dated this the 6th day of November, 2015

JUDGMENT

The petitioner, the owner of a Maruti Zen Car bearing Reg.No.KL-07/AC 3948, assails Exhibits P1 and P2 concurrent orders of confiscation as being illegal and arbitrary.

2. The facts in brief are that on 22.02.2009, at about 11 a.m., the Circle Inspector of Police, Alathur, and party seized the petitioner's vehicle on the allegation that it was being used at that material point of time as an escort to another vehicle, a Lancer car, which was illegally transporting 315 litres of spirit. When the seized vehicle was produced before the Deputy Commissioner of Excise, Palakkad, the said authority, exercising his power under Section 67B of the Abkari Act, passed Exhibit P2 order of confiscation.

3. Aggrieved, though the petitioner filed an appeal, the Additional Commissioner of Excise dismissed the appeal

through Exhibit P1 order. Eventually, assailing Exhibit P1 order of confiscation, the petitioner has filed the present writ petition.

4. The learned counsel for the petitioner has strenuously contended that the petitioner's car itself had not been found carrying any contraband, which is sine qua non under Section 67B(2) of the Act. She has further contended that once the petitioner's vehicle had not been carrying any contraband, on a mere allegation that it was escorting another vehicle, which was incidentally following the petitioner's vehicle, it ought not to have been confiscated. In support of her submissions, the learned counsel for the petitioner has placed reliance on **Sasidharan v. State of Kerala** (1980 KLT 671).

5. Per contra, the learned Government Pleader, on his part, has submitted that at the time when the vehicle was seized the inmates of the petitioner's car flood the

scene. According to him, the conduct of those persons speaks loud as regards the involvement of the petitioner's vehicle.

6. The learned Government Pleader has also contended that on verification, the photocopy of the driving licence and other incriminating material belonging to the prime accused were found in the petitioner's car. Be that as it may, Section 67B of the Act, beginning with a non-obstante clause, to the extent relevant, reads as follows:

“67B(1).-Notwithstanding anything contained in this Act or in any other law for the time being in force, where any liquor, intoxicating drug material, still, utensil, implement or apparatus or any receptacle, package or covering in which such liquor, intoxicating drug, material, still, utensil, implement or apparatus is found or any animal, cart, vessel, or other conveyance used in carrying the same is seized and detained under the provisions of this Act; the officer seizing and detaining such property shall, without any unreasonable delay, produce the same before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Excise Commissioner.” (emphasis supplied)

7. While interpreting the above provision, a learned Division Bench of this Court in **Asst. Excise**

Commissioner v. Paulson (2009 (1) KLT 959) has held that the provision is explicit to the effect that the vehicle subjected to seizure must actually be carrying the contraband. In the present instance, it is not in dispute that the petitioner's vehicle had not been found carrying any contraband.

In the facts and circumstances, essentially guided by the ratio laid down in Paulson (supra), this Court allows the writ petition setting aside Exhibit P1 order. Consequently, the respondent authorities are directed to release the petitioner's vehicle forthwith, subject to other statutory formalities. No order as to costs.

Dama Seshadri Naidu, Judge

tkv