

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WP(C).No. 24694 of 2008 (M)

PETITIONER:

JACOB THOMAS @ SABU PASTER,
AGED 43, S/O. THOMAS,
VENGANOOR HOUSE,
VAZHOOR, KOTTAYAM.

BY ADVS.SRI.V.M.KRISHNAKUMAR
SMT.P.A.ANITHA
SMT.P.R.REENA

RESPONDENTS:

1. THE ASSISTANT EXCISE COMMISSIONER,
O/O ASSISTANT EXCISE COMMISSIONER,
PALAKKAD.
2. ADDITIONAL EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 24694/2008

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF REGISTRATION CERTIFICATE OF MAHINDRA JEEP KL-6/A 9271 ALONG WITH THE INSURANCE CERTIFICATE

EXT. P2 TRUE COPY OF REPORT FILED BY THE AGALI EXCISE RANGE INSPECTOR DATED 27.4.07

EXT. P3 TRUE COPY OF THE ORDER ISSUED BY ASST. EXCISE COMMISSIONER, PALAKKAD DATED 28.3.08

EXT. P4 TRUE COPY OF THE APPEAL FILED UNDER SECTION 67E DATED 23.4.08

EXT. P5 TRUE COPY OF ORDER DATED 20.6.08 ISSUED BY THE ADDL. EXCISE COMMISSIONER, THIRUVANANTHAPURAM

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.24694 of 2008 M

Dated this the 16th day of October, 2015

JUDGMENT

The petitioner, a Pastor in the Church of God, is the accused No.1 in Crime No.6/2007 on the file of Agali Excise Range for offences under Sections 8(1) and 8(2) of the Abkari Act ('the Act').

2. The facts in brief are that on 27.04.2007 the officials of the Excise Department intercepted the petitioner's vehicle and found it transporting 230 litres of arrack, a prohibited substance. As the inmates of the jeep in question fled from the scene, the authorities could not make any immediate arrest.

3. As can be seen, later, the officials arrested the petitioner and another, said to be his accomplice, the second accused. Keeping aside the criminal proceedings in Crime No.6/2007, the progress of which the learned counsel

for the petitioner has no knowledge, I may focus on the confiscation of the vehicle, which is the subject matter of the present writ petition.

4. Initially, after the seizure of the vehicle, the petitioner filed W.P.(C) No.20423/2007 and invited judgment dated 11.09.2007, through which this Court directed interim release of the vehicle to the petitioner on the condition of his furnishing a bank guarantee for ₹ 1,40,000/-. As it emerges, the petitioner could not comply with the judgment of this Court: he failed to produce the bank guarantee; nor could he, as a result, get the interim custody of the vehicle.

5. Evidently, through Exhibit P3 dated 28.03.2008, the Assistant Excise Commissioner, Palakkad, confiscated the vehicle. Aggrieved, the petitioner filed a statutory appeal before the Additional Excise Commissioner, who, through Exhibit P5, confirmed Exhibit P3. Under those

circumstances, the petitioner has approached this Court.

6. The learned counsel for the petitioner has strenuously contended that when the authorities subjected the petitioner's vehicle to confiscation, they had not followed the procedure mandated under Section 67C of the Act. He has further submitted that though the petitioner submitted a detailed note of explanation before the Additional Excise Commissioner, the said authority, while rendering Exhibit P5 order in appeal, did not consider the petitioner's defence.

7. The learned counsel in the end has also submitted that the very crime has been fabricated and foisted on the petitioner. To a specific query from this Court, the learned counsel has replied that he has no knowledge about the progress of the crime: whether it has ended in acquittal or conviction. The learned counsel has submitted that despite his best efforts, he could not contact the petitioner.

8. Be that as it may, it is the singular grievance of the petitioner that when his vehicle was seized, neither the Excise Commissioner nor the Assistant Excise Commissioner has observed any procedural safeguards in terms of Section 67C of the Act.

9. The learned Government Pleader, on his part, has submitted that the respondent officials have followed the procedures perfectly and seized the vehicle. According to him, the concurrent findings of the Assistant Excise Commissioner and the Additional Excise Commissioner do not call for any interference.

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

11. It is evident from Exhibit P3 that it is not an ex parte order. In other words, at the time when the Assistant Excise Commissioner exercised his powers under Section

67B, he put the petitioner on notice; in fact, the petitioner did participate in the enquiry. Thus, Exhibit P3 is an order on merits. Subsequently, the petitioner laid challenge and invited Exhibit P5 order. Even in the order in appeal, the Additional Excise Commissioner has specifically recorded that the petitioner has not discharged his burden cast on him under Section 67C of the Act regarding the alleged lack of knowledge on his part.

12. Incontrovertible is the fact that the petitioner has had ample opportunity before the authorities who have rendered Exhibits P3 and P5 orders. I do not see much force in the contention of the learned counsel for the petitioner that the petitioner has not been put on notice or that there is any procedural infraction.

13. Next, I may consider the petitioner's another contention concerning Section 67C of the Act; namely, lack of complicity or knowledge. Though the learned counsel has

repeatedly submitted that the petitioner has no knowledge, I am afraid, I do not see any positive explanation available on record regarding the petitioner's alleged lack of knowledge about the crime. In my considered view, the burden cast on the owner of the vehicle under Section 67C of the Act is positive in terms. In other words, mere blanket denial concerning one's lack of knowledge is of no consequence.

14. It is for the owner of the vehicle to explain in positive terms under what circumstances he lost possession or control over the vehicle and in what circumstances—if at all he had knowledge—the vehicle had been put to illegal use. Unless such explanation is forthcoming from the owner of the vehicle, it cannot be said that the respondent officials have to presume a lack of knowledge on the part of the owner of the vehicle in terms of Section 67C of the Act.

In the facts and circumstances, I do not see any merit in the case. Accordingly, the writ petition is dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv

'C.R.'