

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 29878 of 2013 (H)

PETITIONER:

SEBASTIAN JOSEPH,
MANAGING DIRECTOR, JOSEPH BROTHERS MARKETING PVT LTD.,
3RD FLOOR, NATIONAL RESIDENTS, BANK JUNCTION,
EDAPALLY, COCHIN - 24.

BY ADVS.SRI.T.A.SHAJI (SR.)
SRI.M.A.ASIF
SMT.NAMITHA JYOTHISH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY PRINCIPAL
SECRETARY TO GOVT., TAXES DEPARTMENT,
THIRUVANANTHAPURAM PIN 695 001.
2. COMMISSIONER OF EXCISE,
KERALA,THIRUVANANTHAPURAM- 695 001
3. ADDITIONAL EXCISE COMMISSIONER (ENFORCEMENT),
THIRUVANANTHAPURAM PIN 695 001
4. DEPUTY EXCISE COMMISSIONER,
ERNAKULAM COCHIN- 18.
5. EXCISE INSPECTOR,
ERNAKULAM EXCISE RANGE, ERNAKULAM DISTRICT, COCHIN 18.

R1-R5 BY ADV. SRI. A.J. JOSE AEDAIODI, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 TRUE COPY OF THE THE CRIME AND OCCURENCE REPORT IN EXCISE CRIME NO 24/12 OF EXCISE RANGE OFFICE,ERNAKULAM ALONG WITH THE MAHAZAR DATED 18-04-2012.

EXHIBIT P2 TRUE COPY OF THE NOTICE DATED 8-05-2012 ISSUED BY 4TH RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE REPLY DATED 23-05-2012 SUBMITTED BY PETITIONER.

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 27-02-2013 PASSED BY 4TH RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 06.05.2013 DISMISSING THE APPEAL.

EXHIBIT P6 TRUE COPY OF THE MEMORANDUM OF REVISION PETITION FILED AGAINST EXHIBIT P5 ORDER.

EXHIBIT P7 TRUE COPY OF THE ARGUMENT NOTES DATED 24-07-2013 SUBMITTED BY THE PETITIONER BEFORE THE REVISIONAL AUTHORITY.

EXHIBIT P8 TRUE COPY OF THE ORDER DATED 12-11-2013 DISMISSING THE REVISION PETITION.

EXHIBIT P9 TRUE COPY OF THE NOTICE DATED 21-11-2013 ASKING TO SURRENDER THE VEHICLE.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

P.A to Judge.

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 29878 of 2013 (H)

Dated this the 17th day of December, 2015.

JUDGMENT

The petitioner, being the owner of a vehicle bearing registration No. KL-07-BT-1110, assails Ext.P8 order in the revision, which confirms Exts.P4 and P5 orders by the primary authority and the appellate authority respectively confiscating the petitioner's vehicle.

2. The facts, in brief, are that the Excise Inspector along with his men intercepted the petitioner's vehicle on 18.04.2012 and found Indian Made Foreign Liquor in excess quantity, though purchased from an authorised retail outlet. At the time of inspection, the Inspector found two persons in the vehicle, one being the driver.

3. As is evident from the record and the submissions made by the respective learned counsel for the petitioner and the respondents, it can be gathered that the crime registered pursuant to the interception was eventually compounded on the accused's paying ₹5000/- as fine.

4. Initially, after the seizure of the vehicle, the primary authority passed Ext.P4 order of confiscation under Section 67B of the Abkari Act ('the Act' for brevity). Aggrieved, when the petitioner filed a statutory appeal, it was dismissed by the appellate authority through Ext.P5 order.

5. Eventually, further aggrieved, the petitioner filed Ext.P6 revision, which was also dismissed by the revisional authority through Ext.P8 order. Under those circumstances, the petitioner has filed the present writ petition.

6. Sri. T.A. Shaji, the learned Senior Counsel appearing for the petitioner, has submitted that the Excise Inspector found three types of liquor in the car. According to him, only beer was found in excess quantity. He has specifically contended that the petitioner, the owner, being admittedly out of town on that particular day, has nothing to do with the alleged crime.

7. In this context, the learned Senior Counsel has drawn my attention to Ext.P1 mahazar to hammer home his point that there was a clear interpolation. In elaboration, he has submitted that when the driver specifically deposed that it was meant for a party in his house,

the interpolation was to the effect that it was at his owner's house.

8. The learned counsel has also strenuously contended that none of the adjudicating authorities, beginning with the primary authority up to the revisional authority, has appreciated the impact of the independent evidence adduced by the petitioner—not even referred to it. In other words, though the petitioner examined two witnesses before the primary authority, there was no whisper about their depositions.

9. Summing up his submissions, the learned Senior Counsel has submitted that in the face of Section 67C of the Act, the respondent officials have miserably failed to establish that the petitioner had any complicity in or even knowledge of the alleged crime. However, the petitioner, contends the learned Senior Counsel, has discharged his burden by examining two independent witnesses.

10. The learned Government Pleader, in tune with the averments in the counter affidavit filed by the 4th respondent, has contended that mere denial on the petitioner's part would not discharge the statutory burden cast on him, being the owner, to prove in positive terms that he had no knowledge of the crime. He has further

submitted that the authorities have discussed the issue threadbare and rendered concurrent findings, which do not call for any interference.

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

12. As is evident from the record, what was seized on 18.04.2012 by the Excise Inspector was 47.610 litres of IMFL, including the wine and the beer. A break up of the quantity as per the types of liquor reveals that the vehicle carried 3.75 litres of rum, etc., 4.5 litres of wine and 39.36 litres of beer.

13. In terms of Section 13 of the Act, the quantities of both the rum and wine are within the permissible limits. Insofar as the beer is concerned, each person can carry 7.8 litres. In this case, since the vehicle has two inmates, they could have carried about 15 litres, but not beyond it. To that extent, there is said to be an offence committed by the inmates of the vehicle.

14. Indeed, in the face of the crime registered subsequently, the accused had the crime compounded and paid the fine of ₹5000/-. Thus, the solitary issue that remains to be addressed is whether the

vehicle is required to be confiscated on the premise that the petitioner had any knowledge of or involvement in the alleged crime.

15. Going by Ext.P1 mahazar, it is evident that the petitioner was out of town on that particular day. To discharge the statutory burden cast on him, he did examine two witnesses before the primary authority. Strangely, though, none of Exts.P4, P5 and P8 contains any reference to the evidence of those two witnesses.

16. Be that as it may, the offence is said to be under Section 63 of the Act, which is a residuary provision. The violation is said to be under Section 13 of the Act, which speaks of the quantity of the liquor that could be carried by a person. In the present instance, the liquor indisputably was purchased from an authorised retail outlet, and the petitioner's driver drove the vehicle.

17. The learned Senior Counsel has submitted that the petitioner's driver secured a job abroad and was all set to leave the country. In that context, he decided to host a party in his house and presumably for the said purpose, he carried the liquor in excess quantity without the petitioner's knowledge, however.

18. The revisional authority in Ext.P8 has observed as follows:

"It is also found that the act was committed with his knowledge and consent."

19. A perusal of the entire record, at any rate, does not reveal where the revisional authority has found in the record that the petitioner had the knowledge and gave consent. The revisional authority has pertinently observed that "eminent personalities in the society or leaders of unions are not beyond the law. From the contention of the petitioner that he is the Managing Director of the company supplying liquor to Kerala Beverages and known to the Excise Department, it is found that he is well aware of the provisions of the Abkari Act."

20. Indeed, the petitioner seems to be the Managing Director of a company supplying liquor to the Kerala State Beverages Corporation and is presumably fully aware of the statutory compulsions. At any rate, the petitioner's position, in my considered view, could not have any impact on the crime. Nor could it visit upon him adversely, either.

21. It is the further observation of the revisional authority that the petitioner could not produce any documentary evidence as regards his lack of knowledge. Regrettably, it is not a requirement. Nor is it legally possible for a person to produce any evidence in the

negative, so to speak. Essentially, lack of knowledge could be gathered from the attending circumstances and the conduct of the parties. In the present instance, the petitioner in terms of Section 67C of the Act did produce two witnesses and thus discharge his burden.

22. True, mere production of evidence, independence or otherwise, does not absolve the owner of the crime; nor can it be said that the examination of witnesses is a conclusive proof as regards the owner's innocence. All that this Court drives home is that to discharge the burden cast on him, the petitioner has examined two witnesses. The authorities could find nothing adverse against the petitioner to bring home his guilt. They did not elicit anything adverse from the evidence of the petitioner's witnesses, either. Had they got inculpatory statements from the witnesses, the authorities would have certainly referred to them in their orders. It was not to be.

23. This Court in Pareed Musaliyar v. State of Kerala and Ravindran v. Excise Inspector, having elaborately appreciated the statutory scheme of Section 67 of the Act, has tellingly observed that though the owner of the vehicle has a positive burden cast on him to establish that he has neither complicity in nor knowledge of the crime,

the provision of confiscation has to be invoked with certain caution and circumspection.

24. Given the fact that the vehicle is worth about ₹18,00,000/- and further given the fact that the petitioner has successfully discharged his burden by examining independent witnesses before the primary authority that he had no knowledge of the alleged crime, more particularly given the further fact that he was not even in the town on that particular day when the vehicle was seized, I am of the considered opinion that Ext.P8 order cannot be sustained. Accordingly, it is set aside.

25. As a natural corollary, the consequential Ext.P9 order enabling the authorities to forfeit the amount deposited earlier by the petitioner for the interim custody of the vehicle cannot also be sustained. As a further consequence, this Court directs the respondent authorities to refund the amount deposited earlier by the petitioner at the earliest.

This writ petition is allowed as above.

sd/- DAMA SESHADRI NAIDU, JUDGE.

