

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

WP(C).No. 32674 of 2008 (M)

PETITIONER:

SINDHU BABU, BINDHU BHAVAN, MANGAD,
ELAMANOOR MURI, ENDIMANGALAM VILLAGE,
ADOOR.

BY ADVS.SRI.ARUN.B.VARGHESE
SRI.B.UNNIKRISHNAN (ADOOR)

RESPONDENTS:

1. THE COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM.
2. THE ADDITIONAL EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.
3. THE ASSISTANT EXCIE COMMISSIONER,
PATHANAMTHITTA.

BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 32674/2008

PETITIONER'S EXHIBITS:

EXT. P1 TRUE COPY OF THE ORDER DATED 7.12.05 IN CRL.M.C.NO.3976/05

EXT. P2 TRUE COPY OF THE ORDER DATED 30.5.07 IN CRL.M.C.NO.1673/07

EXT. P3 TRUE COPY OF THE APPEAL MEMORANDUM SUBMITTED BEFORE THE SECOND RESPONDENT

EXT. P4 TRUE COPY OF THE ORDER DATED 30.5.08 PASSED BY THE SECOND RESPONDENT

EXT. P5 TRUE COPY OF THE NOTICE DATED 7.8.08 ISSUED BY THE FIRST RESPONDENT

EXT. P6 TRUE COPY OF THE OBJECTION FILED

EXT. P7 TRUE COPY OF THE ORDER DATED 10.10.08 PASSED BY THE FIRST RESPONDENT

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.32674 of 2008 M

Dated this the 30th day of November, 2015

JUDGMENT

The petitioner, a lady, is the registered owner of an auto-rickshaw, which was seized on 23.10.2005 by the Adoor Police. The seizure was on the allegation that the vehicle was carrying about fifteen litres of Indian Made Foreign Liquor (IMFL); the police registered Crime No. 735/2005 under Section 55(a) of the Abkari Act ('the Act').

2. Initially, when the petitioner filed C.M.P.No. 5438/2005, the Judicial First Class Magistrate, Adoor, rejected the petitioner's request for interim custody of the vehicle. Aggrieved, the petitioner filed Crl.M.C.No. 3976/2005 and invited Exhibit P1 order from this Court. This Court, in fact, has directed the jurisdictional Magistrate to consider the issue afresh. As a result, the petitioner obtained interim custody of the vehicle.

3. Soon after the petitioner's getting the interim custody of the vehicle, the third respondent issued a notice under Section 67B of the Act to the petitioner why her vehicle should not be confiscated. The third respondent eventually passed orders confiscating the vehicle.

4. Once again, the petitioner approached this Court by filing Crl.M.C.No.1673/2007. This Court did dispose it of through Exhibit P2 order holding that the petitioner had an efficacious alternative remedy. As a result, the petitioner filed Exhibit P3 appeal before the appellate authority, who allowed it through Exhibit P4 order.

5. Nevertheless, the Commissioner of Excise, the first respondent, exercised his suo motu powers and issued Exhibit P5 notice proposing to revise Exhibit P4 order of the appellate authority. In response, the petitioner filed Exhibit P6 objections.

6. At any rate, eventually the first respondent passed Exhibit P7 order interdicting the order in appeal and thereby restoring the order of the primary authority: the vehicle was confiscated. Finally, assailing Exhibit P7 order in revision, the petitioner has approached this Court.

7. The learned counsel for the petitioner has submitted that the suo motu revision had been barred by limitation. Drawing my attention to Section 67F of the Act, the learned counsel has submitted that from the date of the appellate order, the Commissioner of Excise had to exercise, if he desired to, his suo motu power of revision within thirty days. In elaboration, she has submitted that though Exhibit P4 appellate order was passed on 30.05.2008, Exhibit P5 notice proposing to revise the said order was issued on 07.08.2008. According to her, the revision is beyond thirty days; therefore, it is barred by limitation.

8. On merits, the learned counsel has contended that the petitioner, a woman, is not an accused in the crime. She has also submitted that the driver of the vehicle had perhaps been transporting what could, at best, be called excess stock of liquor for his personal consumption. She has further submitted that Exhibit P4 appellate order is unexceptionable.

9. Making Exhibit P4 the cornerstone of her submissions, the learned counsel has submitted that the appellate authority, having supplied cogent reasons, has ruled out the application of Section 55(a) of the Act to the facts of the case. According to the learned counsel, the appellate authority has rightly found that the offence, if at all, is minor in nature, and the confiscation is grossly disproportionate.

10. Per contra, the learned Government Pleader, in tune with the averments in the counter affidavit filed by the

respondents, has submitted that the driver of the vehicle intended to sell the liquor illegally. According to him, the alleged offence squarely attracts Section 55(a) of the Act. The learned Government Pleader has also submitted that limitation has to be reckoned not from the date of notice but from the date when the revisional authority took a conscious decision to exercise his revisional powers.

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

12. This Court is called upon to address the following issues:

I. Whether the suo motu revision taken up by the first respondent is barred by limitation?

II. Whether Exhibit P7 order can be sustained?

Issue No.I:

13. Indeed, Section 67F of the Act mandates in

unambiguous terms that the first respondent can exercise his suo motu powers within one month from the date of the appellate order. The moot question, then, is as regards the terminal point to reckon the period of thirty days. The date of the appellate order being the initial reckoning point, whether the date when the authority took a decision to exercise its revisional powers or the date of notice through which he has notified his intention should be the terminal point for computing the period?

14. In my considered view, the revisional authority taking a decision at whatever point in time and keeping the decision closeted in the folds of his mind or the inaccessible files of his office cannot be a reckoning point. A thought transforms itself into a decision once it crystalises into an ascertainable, say, communication. Limitation, therefore, is always reckoned on the basis of an overt act rather than a nebulous, indistinct instance of thought.

15. If we examine Section 67F of the Act, the provision mandates that the Commissioner may, before the expiry of thirty days from the date of an order passed under Section 67B (Primary Authority) or Section 67E (Appellate Authority), of his own motion, call for and examine the record of that order; he may, as well, make an enquiry or cause an enquiry to be made into the issue before his passing appropriate orders.

16. There are two principal factors for the authority to take into account before his exercising, suo-moto or otherwise, the revisional powers vested in him: (1) it should be before the expiry of thirty days from the date of the impugned order; (2) he should call for the records. Without fear of contradiction, I may hold that the revisional authority has to call for the records before the expiry of thirty days from the date of impugned order—calling for the records, however, is entirely different from actually

securing the records. Ipso facto, calling for the records is the preliminary step in the process of revisional adjudication. And it begins with the issuance a the notice.

17. In the present instance, the revisional authority has brushed aside the petitioner's objection as regards the limitation by reasoning out that he took a decision long prior to issuing Exhibit P5 notice. Regrettably, the settled principle of law is to the effect that the terminal point of limitation should be the date of notice. Lest, it should be impossible to determine the issue of limitation. For every party to a lis would readily take a plea that he has already taken a decision long back and that the notice or intimation is only a subsequent manifestation of that initial decision. In such an eventuality, the possibility of barring a cause on the plea of limitation is reduced to a cipher. I, therefore, hold that the first respondent's exercising his suo-moto power is clearly barred by limitation.

18. On the merits of the matter as well, it can be seen that the vehicle involved in the alleged offence is an auto-rickshaw owned by the petitioner, a woman, who engaged a driver and plied it for hire. In the first place, there is no material on the record to conclude that the petitioner has any knowledge of or complicity in the crime.

19. Once we examine the statutory scheme, it is clear that Section 10 of the Abkari Act prohibits the transportation of liquor or any other intoxicating drug beyond the prescribed limit. Section 13 of the Act further mandates that no person, not being a licensed manufacturer or vendor of liquor or intoxicating drugs, shall have in his possession any liquor, etc., in excess of such quantities as the Government may prescribe from time to time.

20. As per S.R.O.No.127/1999, a person can possess three litres of IMFL. Sri.M.G.Karthikeyan, the learned counsel incidentally present in the Court, responded to my

query by submitting that S.R.O.No.127/1999 was superseded by G.O.(P)No.17/2012, but the quantity of IMFL that can be possessed by a person has not been disturbed, i.e., three litres. The penal provision that governs the alleged offence of either transporting or possessing excess quantity is Section 63 of the Act, a residuary provision.

21. Compendiously viewed, the authorities could not establish, even prima facie, that the petitioner, being the owner of the vehicle, has any knowledge of or complicity in the alleged crime of the driver of her vehicle carrying an excess quantity of IMFL in the vehicle.

22. Viewed from another perspective, a person's transporting liquor illegally is a distinct offence. Unless the very person owns the vehicle, its incidental use for facilitating the alleged offence is only a collateral crime requiring stricter scrutiny. In the present instance, the liquor being transported is not a contraband, much less

illicit. The whole offence, if proved, amounts to a person carrying an excess quantity of liquor. Indisputably, the confiscation of a vehicle worth lacs, more particularly one that is the source of livelihood, is grossly disproportionate to the alleged offence a person has been charged with.

23. In my considered view, the petitioner is eminently entitled to the benefit of Section 67(c)(2) of the Act, for the petitioner has neither the knowledge of nor complicity in the alleged crime. She cannot, therefore, be fastened with any liability under any of the provisions referred to above.

Accordingly, Exhibit P7 is set aside, and the writ petition is allowed. As a consequence, as has been sought by the petitioner in the writ petition, this Court declares that the petitioner's vehicle bearing registration No.KL-01/AF 1286 is not liable to be confiscated. It is made clear that any deposit that has been made by the petitioner at the

time of having the interim custody of the vehicle shall be released to the petitioner forthwith. No order as to costs.

Dama Seshadri Naidu, Judge

tkv/rv

'C.R.'