

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 34818 of 2010 (B)

PETITIONER : -

RAJIMON, AGED 34 YEARS, S/O.SASIDHARAN,
TC 13/1065-65, THOTTUVARAMBIL VEEDU,
KANNAMMOOLA, THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.C.C.THOMAS (SR.)
SRI.NIREESH MATHEW
SRI.M.G.KARTHIKEYAN

RESPONDENTS : -

1. THE SUB INSPECTOR OF POLICE,
VENJARAMMOODU POLICE STATION,
THIRUVANANTHAPURAM DISTRICT - 695 001.
2. THE DEPUTY COMMISSIONER OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
3. THE ADDITIONAL EXCISE COMMISSIONER,
O/O. THE ADDL. EXCISE COMMISSIONER,
EXCISE HEAD QUARTERS, NANDAVANAM
THIRUVANANTHAPURAM - 695 001.
4. THE EXCISE COMMISSIONER,
COMMISSIONERATE OF EXCISE,
THIRUVANANTHAPURAM - 695 001.
5. STATE OF KERALA REPRESENTED BY SECRETARY,
TAXES (A) DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM. - 695 001.

BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1 : COPY OF THE TODDY TRANSPORT PERMIT No.588/2008-09/ID/II HY DATED 18.10.2008 ISSUED BY THE ASST. EXCISE COMMISSIONER, PALAKKAD.

EXHIBIT P2 : COPY OF THE FIR IN CRIME No. 528/2008 REGISTERED BY THE 1st RESPONDENT.

EXHIBIT P3 : COPY OF THE SHOW CAUSE NOTICE DATED 17.2.2009 ISSUED BY THE 2nd RESPONDENT.

EXHIBIT P4 : COPY OF THE REPLY DATED 2.3.2009 SENT TO THE ASST. EXCISE COMMISSIONER, THIRUVANANTHAPURAM.

EXHIBIT P5 : COPY OF THE CHEMICAL ANALYSIS REPORT DATED 20.4.2009 ISSUED BY THE ASST. CHEMICAL EXAMINER TO GOVT. OF KERALA.

EXHIBIT P6 : COPY OF THE ORDER No. T6-8821/2008 DATED 22.6.2010 PASSED BY THE 2nd RESPONDENT.

EXHIBIT P7 : COPY OF THE MEMORANDUM OF APPEAL FILED BEFORE THE 3rd RESPONDENT DATED 26.7.2010.

EXHIBIT P8 : COPY OF THE ORDER No.64/APL/2010 AC (X) DATED 1.11.2010 PASSED BY THE 3rd RESPONDENT.

EXHIBIT P9 : COPY OF THE ORDER No.6/APL/03/AC(X) DATED PASSED BY THE ADDL. EXCISE COMMISSIONER.

EXHIBIT P10 : COPY OF THE ORDER No.30/APL/2005/AC(X) DATED 5.7.2005 PASSED BY THE ADDL. EXCISE COMMISSIONER.

EXHIBIT P11 : COPY OF THE ORDER No.44/APL/2007/AC(X) DATED 1.11.2007 PASSED BY THE ADDL. EXCISE COMMISSIONER.

RESPONDENTS' EXHIBITS : NIL.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 34818 of 2010

Dated this the 28th day of October, 2015

JUDGMENT

The petitioner, the registered owner of Mahindra Max Pickup Van, bearing Reg.No.KL-01/AN-578, assails Exhibit P8 order of confiscation passed by the Additional Commissioner of Excise on appeal.

2. The facts in brief are that the Sub Inspector of Police, Venjarammoodu Police Station, intercepted the petitioner's vehicle within the territorial limits of his Police Station and registered Crime No.528/2008 for the alleged offence under Section 56(b) of the Abkari Act. The gravamen of the allegation is that the petitioner, through a Driver engaged by him, had been transporting illicit toddy beyond the territorial limits of the permit granted.

3. Though in the chemical analysis it was found that the toddy being transported is not spurious and that it was, in fact, consumable, the Deputy Commissioner of Excise, Thiruvananthapuram, exercising his powers under Section 56(b) of the Act, after hearing the parties concerned, passed Exhibit P6 order of confiscation.

4. Aggrieved, when the petitioner filed a statutory appeal against Exhibit P6, the Additional Commissioner of Excise (Enforcement), Thiruvananthapuram, through Exhibit P8 order, confirmed the findings of the primary authority. Under those circumstances, the petitioner has approached this Court.

5. Sri. M.G. Karthikeyan, the learned counsel for the petitioner, has strenuously contended that it is evident from Exhibit P1 toddy transport permit that the licensee of toddy shops in Group No.IV of Kottarakkara Range of Kollam Division has had a valid permit to transport the toddy. He has, further, submitted that the petitioner's vehicle has been shown in the Exhibit P1 permit as the authorised vehicle.

6. In elaboration of his submissions, the learned counsel has submitted that, first, the petitioner's vehicle has not been involved in the transportation of any illicit liquor. According to him, the chemical analysis of the toddy found in the vehicle bears out the fact that the toddy was unadulterated and fit for consumption. Second, the petitioner's new, inexperienced driver, while transporting the toddy, deviated from the regular path and strayed into territorial limits of another jurisdiction.

7. In sum and substance, the contention of the learned counsel for the petitioner is that if at all it is an offence, it is only an offence technical in nature and confiscation of a vehicle worth about two lakh is disproportionate to the offence alleged to have been committed by the petitioner.

8. In support of his submissions, the learned counsel has placed reliance on **Gopalan A.M. v. Umasankar and Another**¹ and **P. K. Babu v. Excise Commissioner**.²

9. *Per contra*, the learned Government Pleader has submitted, in tune with the averments in the counter affidavit filed by the second respondent, that the crime was registered against the petitioner not for deviating from the route; it was for illegal transportation of toddy. He has further submitted that both the authorities, the primary and the appellate, have taken into account all relevant factors while rendering Exhibits P6 and P8 orders respectively. Summing up his submissions, the learned Government Pleader would contend that the orders assailed by the petitioner are unexceptionable and need not be interfered with.

1 2015(4) KHC 252

2 dated 13.07.2012 in W.P. (C) No.4172/2008.

10. At the outset, I may observe that though the learned Government Pleader has contended, as has been pleaded in the counter affidavit, that the crime was registered on the count of the petitioner's transporting illicit toddy rather than for deviating from the permitted route, neither Exhibit P6 nor Exhibit P8 reflects the same. In both the orders, it has been stated, as I am given to understand, that since the vehicle traveled beyond its permitted route, the toddy it had been carrying must be treated as illicit in nature.

11. Be that as it may, it is evident from Exhibit P1 that the petitioner's vehicle had the valid permit to transport toddy. Further, the alleged confession of the Driver of the vehicle that he had intended to transport toddy to shops beyond the permitted areas, at this juncture, cannot be gone into, for it is at best an extra-judicial confession of an accused.

12. It is axiomatic to observe that any punishment or penalty imposed shall be commensurate with the gravity of the offence. It is not in dispute that Section 56 of the Act speaks of misconduct by a licensee and other related aspects. Section 56(b) which is applicable in the present instance mandates

that if a licensee willfully does or omits to do anything in breach of any of the conditions of his licence or permit not otherwise provided for in this Act, it is a punishable offence.

13. The punishment can be by way of an imprisonment for a term which may extend to six months, or with fine which may extend to twenty-five thousand rupees or with both. It is further not in dispute that the offence is compoundable under Section 67A of the Act.

14. In **Rajesh K. v. Sub Inspector of Police, Palakkad and Others**³ this Court has observed that the cardinal constitutional principle mandated under Article 19(1)(g) of the Constitution of India cannot be lost sight of. In that context, it has quoted with approval an earlier decision of this Court in **Suraj K.R. v. Excise Inspector Thrithala and others.**⁴

15. Further, this Court in **P.K. Babu** has observed that it is for the for the authorities to consider whether despite being involved in an abkari offence the vehicle requires to be confiscated. This apparently depends upon the nature and gravity of the offence.

3 2015(4) KHC 253

4 2013(2) KHC 211

16. In the facts and circumstances, I am of the considered opinion that the offence is minor in nature, and a punishment of confiscation of the vehicle is disproportionate. As a result, this Court has two options: to remand the matter to the Appellate Authority, after setting aside Exhibit P8, to enable the authority to fix the penalty to be imposed; by obviating the process of remand, fix the penalty to be paid by the petitioner after setting aside Exhibit P8.

17. Given the fact that the writ petition has been pending since 2010, it is in the interest of justice that this Court avoids the rigmarole of remand which inevitably takes more time.

18. In the facts and circumstances, I allow the writ petition, setting aside Exhibit P8 with a consequential direction to the petitioner to pay Rs.25,000/- as the penalty for the offence of using the vehicle beyond the territorial limits prescribed in the permit.

Needless to observe that in the light of the above pronouncement, since the vehicle has already been in the custody of the petitioner, the respondent authorities shall adjust Rs.25,000/- imposed as the penalty by this Court, from and out of the deposit made by the petitioner and return the

balance to the petitioner. The entire process shall be completed within a period of six weeks from the date of receipt of a copy of this judgment.

No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-