



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 21ST DAY OF NOVEMBER 2023 / 30TH KARTHIKA, 1945

WP(C) NO. 29376 OF 2023

PETITIONER:

D. KINGSTON, AGED 38 YEARS, S/O. DAVID,
NIRMAVA HOUSE, VANDIPERIYAR ATTORAM BHAGOM PO,
VANDIPERIYAR PO, MANJUMALA VILLAGE, PEERMADE
TALUK, IDUKKI DISTRICT, PIN - 685533

BY ADVS.
BIJU .C. ABRAHAM
THOMAS C.ABRAHAM
BASIL MATHEW

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE SECRETARY
TO GOVERNMENT, EXCISE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE ADDITIONAL EXCISE COMMISSIONER (ENFORCEMENT)
THIRUVANANTHAPURAM, PIN - 685033
- 3 THE EXCISE INSPECTOR, EXCISE RANGE OFFICE,
VANDIPERIYAR, IDUKKI DISTRICT, PIN - 68553
- 4 THE DEPUTY EXCISE COMMISSIONER
THODUPUZHA, IDUKKI DISTRICT, PIN - 685584

BY ADV SRI.SUNIL KUMAR KURIAKOSE - G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner, who is the owner of a vehicle bearing Registration No.KL-23-J-5696, impugns Ext.P7 order issued by the 2nd respondent – Additional Excise Commissioner, confiscating it, under the provisions of the ‘Abkari Act’.

2. The petitioner asserts that the allegation against him, that his vehicle was used for transport of contraband liquor, is baseless and unlawful; and that this is proved by the fact that all accused persons have been acquitted through Ext.P2 judgment. He explains that the vehicle in question was given to his brother-in-law, under the impression that it was to be used for the purpose of his travel to meet his wife at Theni, but that it was then intercepted by the officers of the Excise Department, on the allegation that it contained contraband liquor. He submitted – without admitting it – that, even if it is so, as long as there is no allegation against him, that he allowed the vehicle to be used for the purpose of transport of contraband liquor, the proceedings against him are illegal and unlawful. He then added that, since Ext.P2 judgment exonerates the



accused, including his brother-in-law, it is apodictic that there was no contraband liquor at all; and hence that Ext.P7 is illegal and unlawful.

3. In response to the afore submissions made by Sri.Biju C. Abraham – learned counsel for the petitioner, Sri.Sunil Kumar Kuriakose – learned Government Pleader, submitted that the facts are not as stated by the petitioner because, the vehicle was intercepted with contraband liquor and there is cogent evidence to establish the same. He submitted that, in any event, as evident from Ext.P2, the accused therein were not exonerated honourably, but only on account of certain technical reasons, which cannot inure to the benefit of the petitioner. He argued that when the vehicle was intercepted by the Excise Department with the contraband liquor, the consequences of confiscation would apply automatically and that the two proceedings are parallel and independent to each other. He thus prayed that this Writ Petition be dismissed.

4. Though I am in agreement with the argument of the learned Government Pleader, that the provisions relating to confiscation of vehicle and criminal offenses against the accused, are



independent of each other, when Ext.P2 seems to exonerate the accused on the ground that the sample was sent for examination with a lot of delay and the contents were certified to be concentrated Ethyl Alcohol. I am, therefore, certain that this issue ought to have been considered by the competent Authority, before Ext.P7 could have been issued. However, I do not blame the 2nd respondent – Additional Excise Commissioner, in not having done so because, Ext.P7 was issued on 01.03.2023; while, Ext.P2 judgment was delivered on 21.02.2023.

5. Therefore, I am of the view that the matter should attain reconsideration of the 2nd respondent, adverting to Ext.P2, however, making it clear that I am not finding Ext.P7 to be vitiated or to be contrary to law at this stage, but only that the matter will require to be once again looked into by the competent Authority, before a final order can be issued, especially adverting to Ext.P2.

In the afore circumstances and for the sole reason above, I allow this Writ Petition and set aside Ext.P7; with a consequential direction to the 2nd respondent to reconsider the case of the petitioner, after affording him an opportunity of being heard,



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adverting to Ext.P2; thus culminating in an appropriate fresh order and necessary action thereon, as expeditiously as is possible, but not later than three months from the date of receipt of a copy of this judgment.

I, however, clarify that the amount earlier deposited by the petitioner, as a condition for release of his vehicle, will continue to be maintained in such fashion; and will be dealt with in future, depending upon the decision to be arrived at by the 2nd respondent in terms of the afore directions.

RR

Sd/ -
DEVAN RAMACHANDRAN
JUDGE



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APPENDIX OF WP(C) 29376/2023

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE CHARGE SHEET IN CRIME NO. 15/2021 OF EXCISE RANGE OFFICE, VANDIPERIYAR
Exhibit P2	. A TRUE COPY OF THE JUDGMENT DATED 21/2/2023 PASSED BY THE ASSISTANT SESSIONS COURT, THODUPUZHA IN S.C. NO. 98/2022
Exhibit P3	TRUE COPY OF THE RECEIPT DATED 3/9/2021
Exhibit P3(a)	A TRUE COPY OF THE UNDERTAKING DATED 3/9/2021 SUBMITTED BY THE PETITIONER
Exhibit P4	. A TRUE COPY OF THE NOTICE DATED 19/5/2021 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER
Exhibit P5	. A TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT
Exhibit P6	A TRUE COPY OF THE ORDER BEARING NO. ED0IDK/67/2021-ID.3 DATED 9/12/2022
Exhibit P7	. A TRUE COPY OF THE ORDER BEARING NO. 4/APL/2023 DATED 1/3/2023 ISSUED BY THE 2ND RESPONDENT
Exhibit P8	A TRUE COPY OF NOTICE BEARING NO. ED0IDK/67/2021-ID3 DATED 27/7/2023 THUS ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER