

Mini B. J vs Union of India

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : WP(C)/21101/2021

Appellant : Mini B. J

Respondent : Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944
WP(C) NO. 21101 OF 2021 NAME AND ADDRESS OF THE
PETITIONER: MINI B.J, D/O.SOSAMMA, AGED 54 YEARS, KANATHIL
HOUSE, KARIMKULAM KARA, ADIMALI P.O., MANNAMKANDAM
VILLAGE, DEVIKULAM TALUK, IDUKKI -685 561 BY ADVS.SRI.BABU
KARUKAPADATH SMT.M.A.VAHEEDA BABU SRI.RAFEEK.K.A.
SRI.P.U.VINOD KUMAR SMT.ARYA RAGHUNATH SMT.VAISAKHI V.
SRI.T.M.MUHAMMED MUSTHAQ SRI.MOHAMED HISHAM P
SRI.WAZIM BABU KARUKAPADATH SRI.REFEECK CHENNARA
NAME AND ADDRESS OF THE RESPONDENTS:

1 UNION OF INDIA, REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE, PARLIAMENT HOUSE, NEW DELHI-110 001 2 STATE OF KERALA, REPRESENTED BY ITS SECRETARY-TAXES (EXCISE), DEPARTMENT OF EXCISE, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001 3 THE EXCISE COMMISSIONER, EXCISE COMMISSIONERATE, VIKAS BHAVAN P.O., NANDAVANAM, THIRUVANANTHAPURAM-695 033 4 THE DRUG DISPOSAL COMMITTEE, EXCISE DIVISION OFFICE, KACHERIPADY, ERNAKULAM-686 108, REPRESENTED BY ITS CHAIRMAN 5 THE DEPUTY COMMISSIONER OF EXCISE, EXCISE DIVISION OFFICE, KACHERIPADY, ERNAKULAM-686 108, 6 THE EXCISE INSPECTOR, EXCISE RANGE OFFICE, KOTHAMANGALAM, ERNAKULAM-686 691 BY ADVS.SRI.MANU S., ASG OF INDIA SMT.MAYA M N, PUBLIC PROSECUTOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 03rd day of January, 2023 This Writ Petition is filed under Article 226 of the Constitution of India seeking for the following reliefs:

- (i) Declare that, Clause 9(5) (e) of Exhibit P2 notification and other provisions/clauses of the said notification and provisions/Clauses of Exhibit P3 and Exhibit P4 Circulars to the extent it authorizes the sale of conveyances by Drug Disposal Committee even before the trial of the case or order of confiscation and without the orders of the competent courts are arbitrary, unreasonable, ultravires the NDPS Act and the scheme there under and also unconstitutional;
- (ii) Declare that, under the scheme of the NDPS Act,

the conveyances seized on the allegation of the provisions of the said Act, can be subjected to sale only after conclusion of trial and on order of confiscation by a competent court of law.

(iii) Declare that, the NDPS Act does not restrict the power of the trial courts/criminal courts to release the vehicles in interim custody under Section 451 of Cr.P.C.

(iv) Set aside Exhibit P5 order and order release of the vehicle/car bearing No.KL 68-A 8595 owned by the petitioner to her, pending disposal of the trial in Crime No.34 of 2021 of Excise Range Office, Kothamangalam. and

(v) Pass such other orders as this Honble Court shall deem just.

2. The copy of the order under challenge is produced

alongwith the petition on hand as Ext.P5. It is an order passed by Judicial First Class Magistrate Court-II, Kothamangalam (for short the court below) dismissing C.M.P.No.559/2021, filed by the petitioner under Section 451 of the Code of Criminal Procedure, 1973 (for short Cr.P.C) seeking for an order granting interim custody of a Ford Ecosport 1.5 (P) Titanium Motor Car bearing Registration No.KL-68-A-8595. The above application was dismissed by the court below for the reason that it lacks jurisdiction.

3. The Apex Court has held recently in Sainaba V. State of

Kerala [2022 (7) KHC 273 (SC)] that the Special Court is empowered to exercise jurisdiction to grant interim release of the vehicle, on imposition of terms and conditions to be determined by it. In the above scenario, Ext.P5 order is liable to be set aside. In the result, Writ Petition is allowed and Ext.P5 order is set aside. The court below shall reconsider C.M.P.No.559/2021 on its file and pass appropriate orders in tune with the direction of the Apex Court in Sainaba supra, within a period of two weeks from the date of receipt by it of a certified copy of this judgment. MARY JOSEPH JUDGE NAB APPENDIX OF W.P(C) No.21101 of 2021 PETITIONERS EXHIBITS: EXHIBIT P1 TRUE COPY OF THE CRIME AND OCCURRENCE REPORT IN CRIME No.34/2021 OF EXCISE RANGE OFFICE,

KOTHAMANGALAM. EXHIBIT P2 TRUE COPY OF THE NOTIFICATION NO.GSR- 38(E) DATED 16.01.2015 ISSUED BY THE CENTRAL GOVERNMENT UNDER SECTION 52A OF THE NDPS ACT. EXHIBIT P3 TRUE COPY OF THE CIRCULAR NO.EXC1/2022/EXCISE DATED 08.01.2020 ISSUED BY THE EXCISE COMMISSIONER. EXHIBIT P4 TRUE COPY OF THE CIRCULAR NO.EXC8/2020/EXCISE DATED 18.03.2020 ISSUED BY THE EXCISE COMMISSIONER. EXHIBIT P5 TRUE COPY OF THE ORDER DATED 13.08.2021 IN CMP NO. 559/2021 OF THE HONBLE JFCM- II, KOTHAMANGALAM. EXHIBIT P6 TRUE COPY OF THE LETTER DATED 16.09.2021 ISSUED BY THE DEPUTY COMMISSIONER OF EXCISE, ERNAKULAM. RESPONDENTS EXHIBITS: NIL //TRUE COPY// P A TO JUDGE

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