

**Vinod vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1389368](https://sooperkanoon.com/1389368)

**Court :** Kerala

**Decided On :** Aug-25-2023

**Judge :** Honourable Mr. Justice a. Badharudeen

**Appeal No. :** Crl.MC/5719/2021

**Appellant :** VINOD

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN  
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945  
CRL.MC NO. 5719 OF 2021 ST 39/2021 ON THE FILE OF THE CHIEF  
JUDICIAL MAGISTRATE COURT, ALAPPUZHA  
PETITIONER/ACCUSED NOS.1 & 2: 1 VINOD AGED 44  
YEARS,S/O.VASUMOHAN, PUTHUKULATH CHAITHANYA KOODAL  
VILLAGE, KOODAL .P.O, PATHANAMTHITTA-689693. 2 SAJEESH .S.  
S/O.SASIDHARAN.P.K. VYSHNAVAM, VELLAPPARA.P.O.  
PRAMODOM, PATHANAMTHITTA 689646 BY ADVS.  
M.T.SURESHKUMAR R.RENJITH SREELAKSHMI SABU  
RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM-682031. 2 SREEKUMAR.K, ASSISTANT MOTOR VEHICLE INSPECTOR, REGIONAL TRANSPORT OFFICE(ENFORCEMENT), AMBALAPPUZHA, ALAPPUZHA, PIN-688561.

SRI.P G MANU, R.PUBLIC PROSECUTOR THIS CRIMINAL MISCELLANEOUS CASE HAVING COME UP FOR ADMISSION ON 25.08.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.M.C.No.5719/2021 2 C.R.

## **ORDER**

Dated this the 25th day of August, 2023 This Crl.M.C. has been filed under Section 482 of the Code of Criminal Procedure and the petitioners, who are accused Nos.1 and 2 in S.T.No.39 of 2021, on the files of the Chief Judicial Magistrate, Alappuzha, seek to quash the above complaint.

2. Heard the learned counsel for the petitioners as well as the learned Public Prosecutor.

3. The crux of the case is that, on 01.03.2021, while

the complainant who is the authorised officer to inspect vehicles and to impose penalty as per Section 213(5)(E) of the Kerala Motor Vehicles Act (hereinafter referred to as 'the M.V. Act') read with Rule 405(1)(2)(3) of the Kerala Motor Vehicles Rules, and as per the Government Order vide SRO No.788/2019, was engaged in his official duty at Pullikkanakku in Alappuzha District, he had intercepted a contract carriage vehicle bearing registration No.KL-26-J- 5900 of Ashok Leyland make Model No.A L-1618 BSIV-HGV belonged to the first accused, driven by the second accused. Crl.M.C.No.5719/2021 3

The vehicle contained stone products and was going to Krishnapuram from Konny. As the Inspector had reasons to believe that the vehicle was carrying overload, he had directed to weigh the entire vehicle and to produce the weigh bill. The driver weighed the vehicle at Shakthi Weighbridge in Randamkutty which was approved as per Section 341(b) of the M.V. Act. As per the weigh bill produced bearing S L No.7537 dated 01.03.2021 shows time 11:47:12 hrs. the total weight of the vehicle

was shown as 24090 Kg. Since the Gross vehicle weight permitted was only 18,500 Kg., an excess weight of 5,590 Kg. was noticed and the same found to be in violation of Section 113(3) (b) of the M.V. Act punishable under Section 194(1) of the M.V. Act, penalty to the tune of Rs.30,000/- was imposed confining the same to Rs.20,000/- for over loading and Rs.2,000/- towards extra load and thereby the accused alleged to have committed the above offences as per the complaint averments.

4. Learned counsel for the petitioner would submit that as per Section 113(3)(b) of the M.V. Act, if the laden weight of the vehicle which exceeds gross vehicle weight  
Crl.M.C.No.5719/2021 4

specified in the certificate of registration or if at all a vehicle is found to be overloaded, then also the owner of the vehicle could not be arrayed as an accused in this case instead the owner of the goods should have been arrayed as the accused. Therefore, the prosecution against accused No.1, the RC owner of the vehicle, and accused No.2, the driver of the vehicle, without arraying the owner of the goods as an accused could not sustain. Accordingly, the complaint is liable to be quashed.

5. Learned Public Prosecutor opposed the contention

and submitted that the unladen weight of the contract carriage herein is 7490 Kg. and the gross weight as per the RC book is 18500 Kg., but at the time of detection, it was found that the gross weight of the vehicle as 24090 Kg. Therefore, 5590 kg. was found in excess of the gross weight of the vehicle and accordingly complaint alleging commission of offence punishable under Section 194 (1) read with Section 113(3)(b) of the M.V. Act was lodged before the Chief Judicial Magistrate and the said complaint is well within the ambit of law and the same cannot be quashed. Crl.M.C.No.5719/2021 5

6. In view of the rival arguments, the following queries arise for consideration:

1. What is meant by unladen weight of a vehicle under the M.V. Act?
2. What is meant by laden weight of a vehicle under the M.V. Act?

3. Who are the persons to be arrayed as accused in a prosecution alleging commission of offence punishable under Section 194(1) read with Section 113(3)(b) of the M.V. Act?

7. In this regard reference to Section 194 of the M.V. Act is necessary. The same is as under : 194. Driving vehicle exceeding permissible weight.-

(1) Whoever drives a motor vehicle or

causes or allows a motor vehicle to be driven in contravention of the provisions of section 113 or section 114 or section 115 shall be punishable with minimum fine of two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load].

(2) Any driver of a vehicle who refuses to

stop and submit his vehicle to weighing after being directed to do so by an officer authorised in this behalf under section 114 or removes or causes the removal of the load or part of it prior to weighing shall be CrI.M.C.No.5719/2021 6 punishable with fine which may extend to three thousand rupees.

8. On perusal of the copy of the complaint, it is

discernible that on 01.03.2021, the vehicle bearing registration No.KL-26-J-5900 was found loaded with 24090 Kg., in excess of 18,500 Kg., the laden weight, and accordingly, the complainant imposed penalty for over loading and lodged complaint alleging commission of the above offences. On perusal of the copy of RC book produced as Annexure A2, the gross weight of the vehicle is shown as 18500 Kg. and the unladen weight is shown as 7490 Kg. Section 113(3) of the M.V.Act provides thus :

"113(3) : No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer-

- (a) the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or
- (b) the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration."

9. While considering what is meant by the

unladen weight of a vehicle under the M.V. Act, unladen weight means the weight of a vehicle alone without any goods or burden and the same includes the body and all Crl.M.C.No.5719/2021 7

parts which are necessary and usually used with the vehicle or trailer on the road/public place and in the case of electrically powered vehicles, the batteries also and the unladen weight shall be one which is specified in the certificate of registration of the vehicle. Laden weight means the gross or total weight of the vehicle when the same is filled with goods and the laden weight/gross weight shall be one permissible as specified in the certificate of registration.

10. Coming to the question, who are the persons to

be arrayed as accused in a prosecution alleging commission of offence punishable under Section 194(1) read with Section 113(3)(b) of the M.V. Act, a plain reading of Section 194 of the M.V. Act would show that whoever drives a motor vehicle in violation of the provisions of Section 113 is liable to be prosecuted. Similarly whoever causes or allows a motor vehicle to be driven in contravention of the provisions of Sections 113, 114 or 115 shall be punishable with fine of rupees two thousand or additional amount of one thousand rupees

Crl.M.C.No.5719/2021 8 per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

11. Thus it has to be held that the driver must be

an accused since the driver as an offender is specifically mentioned in the Section. It is relevant to note that, apart from the driver, whoever causes or allows a motor vehicle to be driven in contravention of the above provisions also is liable to be

prosecuted and the registered owner of the vehicle is a person who causes or allows the motor vehicle to be driven in contravention of the provisions and therefore the owner of the vehicle could not be spared and he is also liable to be prosecuted alleging that the registered owner as the person who allowed or caused over loading.

12. The learned counsel for the petitioner

submitted that as per Section 113(3) of the M.V. Act, no person shall drive or cause or allow to be driven in a public place any motor vehicle or trailer without following the restrictions under 113(3)(a) and (b). Therefore, the owner of the goods also is liable to be prosecuted treating Crl.M.C.No.5719/2021 9 him also as a person who caused to allowed the vehicle to be driven in public place with over load.

13. The crucial question is whether Section 113(3)

of the M.V. Act includes the owner of the goods in the vehicle also as an accused treating him as a person who caused or allowed to be driven the vehicle in any public place with over load. In this context, it has to be observed that the laden and unladen weight of the motor vehicle and the maximum loading permissible are matters known to the driver as well as the owner of the vehicle to be read out from the certificate of registration and the owner of the goods cannot insist for production of the certificate of registration to see the unladen weight to avoid over loading. So it is the duty of the driver vis-a-vis the owner of the vehicle to ensure that the vehicle should not be driven in public place with load in excess of the laden weight and on failure to do so by the driven and the owner by itself is not a reason to hold that the owner of the goods also is liable to be prosecuted for the offence punishable under Section 194 (1) read with Section

Crl.M.C.No.5719/2021 10 113(3)(b) of the M.V. Act.

14. To be on the crux of this case, the complaint

was lodged alleging commission of the above offences when the complainant found 5590 kilogram of goods in excess of 18500 kilogram, the laden weight of the

vehicle and accordingly prosecution was launched against the driver and owner of the contract carriage bearing registration No.KL-26-J-5900 and the said prosecution is well maintainable and the same cannot be quashed. Therefore, this petition must fail.

Accordingly, this Crl.M.C. stands dismissed. Sd/- A. BADHARUDEEN JUDGE csl Crl.M.C.No.5719/2021 11 APPENDIX OF CRL.MC 5719/2021 PETITIONERS' ANNEXURES Annexure A1 TRUE COPY OF THE COMPLAINT in ST NO.39/2021 ON THE FILE OF CJM ALAPPUZHA PREFERRED BY THE ASSISTANT MOTOR VEHICLES INSPECTOR DATED 29.7.2021. Annexure A2 TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE VEHICLE BEARING NO.KL-26-J-5900 DATED 25-6-2018.

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