

C. Rajeev vs the Excise Inspector

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Court : Kerala

Decided On : Feb-11-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : WP(Crl.)/57/2022

Appellant : C. Rajeev

Respondent : The Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
FRIDAY, THE 11TH DAY OF FEBRUARY 2022 / 22ND MAGHA, 1943
PETITIONER/S: C. RAJEEV AGED 51 YEARS S/O. VIJAYAN,
CHENNETHODI HOUSE, EDAYUR POST, MALAPPURAM DISTRICT,
(LICENSEE, FL - 3, NO.M-24, HOTEL GRAND RESIDENCY,
VALANCHERRY, MALAPPURAM DISTRICT.) BY ADVS.
M.G.KARTHIKEYAN NIREESH MATHEW RESPONDENTS: 1 THE
EXCISE INSPECTOR EXCISE RANGE OFFICE, KUTTIPPURAM - 679
571, MALAPPURAM DISTRICT. 2 THE CIRCLE INSPECTOR OF
EXCISE TIRUR - 676 101, MALAPPURAM DISTRICT. 3 THE DEPUTY
COMMISSIONER OF EXCISE UP HILL, MALAPPURAM - 676 505. 4

THE EXCISE COMMISSIONER COMMISSIONERATE OF EXCISE,
EXCISE HEAD QUARTERS, NANDVANAM, THIRUVANANTHAPURAM
- 695 033. Adv. Aravind V. Mathew THIS WRIT PETITION (CRIMINAL)
HAVING COME UP FOR ADMISSION ON 11.02.2022, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of February, 2022. The writ petitioner is a FL3 licensee conducting Hotel Grand Residency, Valanchery, Malappuram District. He was implicated as the second accused in Crime No.39/2021 registered by the first respondent as instructed by the second respondent.

2. The offences alleged are those punishable under

Sections 55 (a), 55(i), 55D and 56(b) of the Abkari Act (for short the Act). Originally a crime was registered for offences punishable under Section 55(a) and (i) of the Act against one of the workers of the petitioner. Subsequently, by an additional report filed, the petitioner was also implicated as the 2 nd accused and the offences under Sections 55D and 56(b) of the Act were also incorporated. As per the allegations of the prosecution at 2.15 p.m. on 18.7.2021, the Excise party seized IMFL in 1143 bottles having 657 liters of liquor as contents. Mahazar and other documents were prepared. The liquor was found to be purchased by the petitioner from KSBC-(FL-9) for use in his hotel. The allegation against the petitioner was that he had entrusted the liquor to one of his employees for sale, against Covid-19 restrictions and in violation of the provisions of the Act.

3. Proceedings were initiated by the Excise

Commissioner under Section 26 of the Abkari Act r/w Rule 34 of the Foreign Liquor Rules for suspending the license. Notice was issued to the licensee to show cause why the license issued in his favour shall not

be cancelled. Fine of Rs. 50,000/- was also imposed by the Excise Commissioner on each accused as per proviso to Rule 34 of the Foreign Liquor Rules. On deposit of the fine as directed, the license of the petitioner was ordered to be restored. Copy of the order is produced along with the writ petition on hand. In the above circumstances, the petitioners approached Judicial First Class Magistrate Court Tirur by filing an application under Section 457 Code of Criminal Procedure seeking for release of the liquor seized by the Excise party in Crime No.39/ 2021. The said application was dismissed by the court below. In the above circumstances that the writ petition on hand is filed seeking for release of the liquor seized by the Excise Department to the petitioner herein.

4. The learned Public Prosecutor on instructions

submitted that the liquor can be released after obtaining bank guarantee equivalent to the value of it. The learned counsel for the petitioner has also produced an order passed by Single Judge in a similar matter which is appended to the petition on hand as Ext.P7. Ext.P7 order was passed on 26.3.2021 and it directs release of IMFL seized in Crime No.3922/2020 of Kottarakkara Police Station to the writ petitioner on furnishing a bank guarantee for the value of the liquor. It has also been clarified in the order that the interim release of the liquor shall be subject to confiscation proceedings, which would be initiated later. In the above circumstances, the writ petition is only to be allowed in part and this Court do so.

In the result, Writ Petition is allowed in part and interim release of the liquor seized is ordered on furnishing a bank guarantee equivalent to its value. It is clarified that the interim release of the liquor shall be subject to proceedings for confiscation, whenever is initiated.

Sd/- MARY JOSEPH JUDGE al/- APPENDIX OF WP(CRL.) 57/2022
PETITIONER EXHIBITS Exhibit P1 TRUE PHOTOCOPY OF THE ORDER

NO.EXC/3168/2021- XC-1 DATED 08.11.2021 PASSED BY THE 4TH RESPONDENT. Exhibit P2 TRUE PHOTOCOPY OF THE LETTER DATED 16.11.2021 SENT TO THE 3RD RESPONDENT WITH COPIES TO RESPONDENTS 4 AND 2. Exhibit P3 TRUE PHOTOCOPY OF THE REPLY DATED 01.12.2021 ISSUED BY THE 3RD RESPONDENT. Exhibit P4 TRUE PHOTOCOPY OF THE PETITION, CMP NO.4481/2021 FILED BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT, TIRUR DATED 19.11.2021. Exhibit P5 TRUE PHOTOCOPY OF THE REPORT SUBMITTED BY THE 2ND RESPONDENT BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT, TIRUR DATED 12.11.2021. Exhibit P6 TRUE PHOTOCOPY OF THE ORDER DATED 10.12.2021 IN CMP NO.4481/2021 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT - I, TIRUR. Exhibit P7 TRUE PHOTOCOPY OF THE ORDER PASSED BY THIS HON'BLE COURT DATED 26.03.2021 IN WP(C) NO.5210/2021. Exhibit P8 PHOTOCOPY OF THE DECISION, SUNDERBHAIR AMBALAL DESAI VS. STATE OF GUJARAT REPORTED IN 2003(2) KLT 1089 (SC). Exhibit P9 PHOTOCOPY OF THE DECISION, LAL VS. ASST. EXCISE COMMISSIONER REPORTED IN 2001(1) KLT 840. Exhibit P10 TRUE PHOTOCOPY OF THE MAHAZAR DATED 18.07.2021 PREPARED BY THE 2ND RESPONDENT. Exhibit P11 TRUE PHOTOCOPY OF THE CRIME AND OCCURRENCE REPORT IN CR NO.39/2021 REGISTERED BY THE 1ST RESPONDENT.

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