

**Palpandy vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1570561](https://sooperkanoon.com/1570561)

**Court :** Kerala

**Decided On :** Feb-01-2022

**Judge :** Honourable Mrs. Justice Mary Joseph

**Appeal No. :** WP(Crl.)/531/2021

**Appellant :** Palpandy

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH  
TUESDAY, THE 1ST DAY OF FEBRUARY 2022 / 12TH MAGHA, 1943  
PETITIONER/S: PALPANDY AGED 49 YEARS S/O.CHINNAKKALA,  
HOUSE NO.219, SOUTH STREET, PARAMATHEVANPETTY,  
UTGHAMPALYAM TALUK, THENI DISTRICT, TAMILNADU. BY ADV  
BIJU .C. ABRAHAM RESPONDENTS: 1 STATE OF KERALA  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
DEPARTMENT OF EXCISE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM - 695 001. 2 THE DEPUTY  
COMMISSIONER OF EXCISE, OFFICE OF THE DEPUTY  
COMMISSIONER OF EXCISE, IDUKKI- 685509. 3 THE SUB

INSPECTOR OF POLICE, KUMILY POLICE STATION, KUMILY, IDUKKI DISTRICT - 685509. THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 01.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **JUDGMENT**

This petition is filed under Article 226 of the Constitution of India seeking to call for the records leading to Ext.P4 and issue a writ of certiorari quashing the same and to issue a writ of mandamus or any other appropriate writ or order directing the second respondent to reconsider the case proceedings bearing I.D.- 3-7581/15 with regard to the vehicle of the petitioner and allow the petitioner to contest the case effectively.

2. The facts of the case are as follows: The petitioner is

the owner of a Mini lorry bearing registration No. TN-60-Q-1217. At about 8.30 P.M on 8.7.2015, the Sub Inspector of Police, Kumily Police Station who is the third respondent has seized the vehicle near Salim Food Court, Kumily in front of Kumily Bus Stand. On a search of the vehicle 6.5 litres of IMFL was found kept without any authority. Thereupon Crime No.534/2015 was registered at Kumily Police Station for the offences punishable under Section 55 (a) and (i) of Kerala Abkari Act. The petitioner then approached Judicial First Class Magistrate Court, Peerumade and filed an application seeking for release of the vehicle as CMP No. 2102/2015. The said Court was pleased to pass an order in

the application directing the second respondent, the Deputy Commissioner of Excise, Idukki to release the vehicle to the

petitioner. The true copy of the proceedings of the second respondent is produced alongwith the writ petition as Ext.P1. The petitioner received a notice from the Excise Department in the meantime directing him to be present at the office of the second respondent to be heard in the confiscation proceedings of the vehicle and to submit his explanation. True copy of the notice received by the petitioner is appended to the writ petition as

Ext.P2. The petitioner submitted reply to the notice on 12.11.2015 and sought for time for filing objection. The same was received at the office of the second respondent on 15.11.2015. The second respondent was not available in the office and the office bearers informed him that the date of hearing will be intimated later. True copy of the reply filed by the petitioner before the second respondent is appended to the writ petition as

Ext.P3. The petitioner was present at the office of the second respondent on 15.11.2015, but, there was no sitting. The petitioner had filed his reply then and the authorities informed him further that the posting date of the case would be informed. Thereafter the petitioner and the sureties stand for the release of the vehicle received a notice on 29.10.2021 from Judicial First

Class Magistrate Court, Peerumade. Thereupon, the petitioner submitted an application under the Right to Information Act, 2005 before the second respondent. The reply was received by the petitioner on 2.12.2021 alongwith a copy of the order passed on 22.7.2016 by the second respondent directing production of the vehicle at the office. Copy of the same is produced as Ext.P4 and

the covering letter dated 2.12.2021, as Ext.P4(a). According to the petitioner, Ext.P4 order is illegal since he was not heard prior to passing of the same. Accordingly, the Writ Petition (Crl.) on hand is filed seeking to quash Ext.P4 proceedings of the second respondent.

3. The learned Public Prosecutor though directed to obtain a report in the matter, failed to do so.

4. It is found from Ext.P4 proceedings of the second

respondent that the reply filed by the petitioner dated 12.11.2015 was received therein. On going through Ext.P4 order, this Court has noticed that though the reply dated 12.11.2015 seeking for time for filing objection by the petitioner was received at the office of the second respondent, the same was not responded to. It was also revealed from Ext.P4 order that the petitioner was not

heard prior to passing of the same. It is noticed that the confiscation of the vehicle was already effected without granting the petitioner sufficient opportunity to file his objection and to contest his case. In the above circumstances, Ext.P4 order is only to be set aside. In the result, the Writ Petition (Crl.) stands allowed. Ext.P4

proceedings is set aside and the second respondent is directed to issue notice to the petitioner granting him an opportunity to file his objection in the matter and shall pass appropriate orders only after hearing him personally. At any rate, notice shall be issued to the petitioner within two weeks from the date of receipt of a copy of this judgment and thereafter he shall be heard on his contentions prior to taking any decision about the vehicle.

Sd/- MARY JOSEPH JUDGE al/-.. APPENDIX OF WP(CRL.) 531/2021  
PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE PROCEEDINGS OF  
THE 2ND RESPONDENT BEARING ORDER NO.ID3-7581/15 DATED  
18.09.2015. Exhibit P2 TRUE COPY OF THE NOTICE DATED 14.10.2015  
ISSUED TO THE PETITIONER. Exhibit P3 TRUE COPY OF THE REPLY DATED  
12.11.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND  
RESPONDENT. Exhibit P4 TRUE COPY OF THE ORDER BEARING NO.I.D.3-  
RESPONDENT. Exhibit P4(A) TRUE COPY OF THE COVERING LETTER  
DATED 02.12.2021.

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