

Salu Vs. Assistant Controller

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SooperKanoon Citation : sooperkanoon.com/726819

Court : Kerala

Decided On : Jun-20-2005

Reported in : 2005(3)KLT520

Judge : K. Padmanabhan Nair and; V. Ramkumar, JJ.

Acts : Kerala Standards of Weights and Measures (Enforcement) Act, 1985 - Sections 4, 30, 31, 32, 37(1), 63 and 72; ;Kerala Standards of Weights and Measures Act, 1976 - Sections 2, 3, 4 and 29(1); Kerala Standards of Weights and Measures (General) Rules, 1987; Kerala Standards of Weights and Measures (Enforcement) Rules, 1992 - Rule 19 and 19(2); Indian Penal Code; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 4(2), 100, 102, 451, 452 and 482; [Constitution of India](#) - Article 226

Appeal No. : Crl. M.C. No. 1535 of 2004

Appellant : Salu

Respondent : Assistant Controller

Advocate for Def. : P.V. Madhavan Nambiar, Director General of Prosecution

Advocate for Pet/Ap. : S. Rajeev, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V. Ramkumar, J.

1. This CrI.M.C. filed under Section 482 Cr.P.C. seeking interim custody of a tanker lorry seized by the Assistant Controller (Flying Squad), Department of Legal Metrology, Thrissur, for allegedly violating Section 37(1)(vii) of the Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as 'the Enforcement Act' for short), comes up before us on a reference by one of us, (Padmanabhan Nair, J.)

2. The aforesaid tanker lorry bearing registration No. KL-7F 6093 of which the petitioner herein (1st accused in S.T.No. 4940/03 on the file of JFCM, Chittur) is the registered owner, was on inspection by the respondent Assistant Controller on 1.8.2003, found to contain a secret chamber inside the 3rd compartment of the main tank. The said secret chamber having a capacity of 121.108 liters was fitted with a special valve which would open to facilitate the secret chamber also to get filled while the main tank was filled with fuel. But while emptying the main tank during the course of supply to the distributors, the valve of the secret chamber will remain closed so that the fuel collected in the secret chamber will be retained there itself facilitating pilferage of fuel. The tanker lorry was inspected by the respondent by virtue of his power under Section 30 and seized under a detailed mahazar in exercise of his power under Section 31 of the Enforcement Act. Subsequently the seized tanker lorry was produced before the Judicial Magistrate of First Class, Chittur and released to the respondent himself for safe custody and the respondent in turn entrusted the lorry to the Kozhinhampara Police. The vehicle is thus stated to be in the custody of Kozhinhampara Police.

3. As per C.M.P.5778/2003 filed before the Trial Court, the petitioner sought interim custody of the tanker lorry by invoking Section 451 Cr.P.C. By Annexure A-1 order dated 30.8.2003 the Trial Court rejected the said application holding inter alia that the vehicle with the secret chamber which is the main evidence in the case if released to the petitioner was likely to be misused and that the vehicle was

liable to forfeiture under Section 32 of the Enforcement Act. Eventhough the petitioner challenged the said order before this Court in CrI.M.C. 4520/03 filed under Section 482 Cr.P.C., as per Annexure A II order dt. 17.9.2003 this Court after adverting to the objection by the respondent that there was very livelihood of destruction of the material piece of evidence and noticing the peculiar nature of the case, instead of releasing the vehicle to the petitioner, directing the Magistrate to dispose of the main case itself within two months of receipt of the order.

4. The petitioner thereafter filed a Writ Petition before this Court as W.P.(C) No. 2765/04 under Article 226 of the [Constitution of India](#) for interim custody of the vehicle and also for a direction to expedite the disposal of the main case. Noticing the dismissal by this Court of CrI.M.C. 4520/03 seeking interim custody, this Court as per Annexure A III Judgment dt. 23.1.2004 dismissed the Writ Petition.

5. The Trial Court has not been able to dispose of the main case within the time frame allowed by this Court since accused Nos. 2 and 3 in the case are still absconding. Even if the case against them is split up and the case against the petitioner herein is produced with, tried and disposal of separately, the Trial Court will have to retain the custody of the vehicle until the case against the absconding accused is also finally disposed of after their apprehension or voluntary surrender. It is at this juncture that the petitioner has filed this case under Section 482 Cr.P.C. again seeking interim custody contending inter alia that the Trial Court has not been able to comply with the direction of this Court to finally dispose of the case within the time frame fixed by this Court hereby constituting a change of circumstance and that interim custody of the vehicle should be given to the petitioner in the light of the guidelines laid down by the Hon'ble Supreme Court in *Sunderbai Ambalal Desai v. State of Gujarat*, : [2002]SUPP3SCR39 .

6. It was argued before the learned Single Judge before whom this CrI.M.C. came up for consideration that in a similar case employing identical modus operandi of carrying fuel in a secret chamber in a tanker lorry, this Court as per order dated 27.2.2004 in Cr.M.C. No. 304/04 had granted interim custody to the applicant and the SLP filed against the said order was dismissed by the Supreme Court. The learned Single Judge was of the view that since the order passed in CrI.M.C.No.

304/04 was without reference to the relevant statutory provisions, the matter has to be examined by a Division Bench to consider whether there is any statutory bar in granting interim custody of the tanker lorry and also to consider whether the vehicle excluding the tank mounted on it could be separately considered for the purpose of interim custody. Hence this reference.

7. Opposing the application for interim custody Sri. P.V. Madhavan Nambiar, the learned Director General of Prosecutions made the following submissions before us:

The offence alleged against the petitioner is not one punishable under the Indian Penal Code but one punishable under Section 37(1)(vii) of the Enforcement Act which is a special law, and therefore, it is 'other law' within the meaning of Section 4(2) Cr.P.C. and it is accordingly liable to be dealt with subject to such other law. Section 4 of the Enforcement Act declares that the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith contained in any other Act including the Standards of Weights and Measures Act, 1976 (hereinafter referred to as the 'Standards Act' for short) or in any instrument having effect by virtue of any other enactment. There is a similar overriding provision under Section 3 of the Standards Act. A reading of Sections 30 and 31 of the Enforcement Act will show that the provisions of the Cr.P.C. are made applicable only for the purpose of search and seizure to be made under those sections. Therefore, by necessary implication Section 451 Cr.P.C., is not made applicable to cases charged under the Enforcement Act. Consequently, the decision reported in (2003) SCC (Cri.) 1943 relied on by the petitioner cannot have any application to the present case and the said ruling governs only those cases where Section 451 Cr.P.C. is applicable. Even assuming that Section 451 Cr.P.C. could be pressed into service by the petitioner, an examination of the provisions of the Enforcement Act and Standards Act will reveal that the tanker lorry together with the tank mounted on it will constitute the measure in this case and therefore interim custody of neither the tanker lorry with the tank mounted on it nor the chassis after severing the tank therefrom, can be given. The definition of expressions which are not defined in the Enforcement Act has to be taken from the Standards Act by virtue of Section 3(o) of the Enforcement Act. 'Weight or Measure' as defined

under Section 2(zd) of the Standards Act means weight or measure specified by or under the said Act and includes a weighing or measuring instrument. As per Section 2(zc) 'weighing or measuring instrument' means any object, instrument, apparatus or device, or any combination therefore which is or is intended to be, used, exclusively or additionally, for the purpose of making in weightment or measurement and includes any appliance, accessory or part associated with any such object, instrument, apparatus or device. The definition of the word 'calibration' as contained in Section 2(a) of the Standards Act read with the definition of 'vehicle tank' in Clause (1)(a) of Schedule IX A of the standards of Weights and Measures (General) Rules, 1987 and the calibration procedure detailed in the said schedule will indubitably show that the vehicle together with the tank mounted on it constitutes the measure for the purposes of the said Acts and the rules. Moreover, the tanker lorry involved in this case is a false measure which is liable to be forfeited to the Government by virtue of Section 32 of the Enforcement Act. In the light of the decision of the Apex Court in State of West Bengal v. Sujit Kumar Rana, (2004) SCC (Cr.) 984, where confiscation proceedings have been initiated before the appropriate authority under the Special Law, the jurisdiction of the Criminal Court in that behalf stands excluded. If the Criminal Court has no power to deal with the property seized under the Special Law, then the inherent power of the High Court under Section 482 Cr.P.C. cannot be exercised for releasing the vehicle since that power could be exercised only in relation to a proceeding pending before a Court. The Kerala Standards of Weights and Measures (Enforcement) Rules, 1992 framed by the State Government in exercise of the powers conferred by Section 72 of the Enforcement Act and which came into force on 24.7.1992 contains specific provision for disposal of seized weights, measures etc. Rule 19 of the said Rules reads as follows:

'19. Disposal of seized weights, measures, etc.--

(1) Any weight or measure or document or thing seized and detained under Sections 30 or 31 of the Act, which is not to be the subject of proceedings in a Court, shall after the expiry of sixty days of its seizure, be so dealt with as the Controller may by general or special order direct, and the materials thereof shall be sold and the proceeds credited to the Government:

Provided that the Controller may direct that un-verified weight or measure shall be returned to the person from whom such weight or measure was seized if that person gets the same verified and stamped, within ten days of the return, on payment of the prescribed fee including the additional fee payable for undertaking re-verification after the expiry of the validity of the stamp.

(2) Any weight or measure or document or thing seized and detained under Section 30 or 31 of the Act, which is to be the subject of proceedings in a Court, shall be produced by the Inspector before the Court, and shall after conclusion of the proceedings, be taken possession of by the Inspector and dealt with in accordance with the orders of the Court:

Provided that in the absence of the orders of the Court, weight or measure or document or thing shall be dealt with as the Controller may by special order direct and the materials thereof shall be sold and the proceeds credited to the Government.

(3) If any goods, seized under Sections 30 or 31 of the Act, are subject to speedy or natural decay, the Inspector shall have the goods weighed or measured on a verified weighing or measuring instrument available with him or near place of offence and enter the actual weight or measure of the goods in a form specified by the Controller for this purpose, and shall obtain the signature of the trader or his agent or such other person who has committed the offence. The goods in question shall be returned to the trader or the purchaser as the case may be:

Provided that if the trader or his agent or the other person (who has committed the offence) refuses to sign the form, the Inspector shall obtain the signature of not less than two persons present at the time of such refusal by the trader or his agent or other person.

(4) Where the goods seized under Sub-section (1) of Section 29 of the Standards Act are contained in a package and the package is false or does not confirm to the provisions of the Act or any rule made thereunder and the goods in such package are subject to speedy or natural decay, the Inspector so far as may be, may dispose of the goods in such package in accordance with the provisions of Sub-

rule (3).

(5) Where the goods seized under Sub-section (1) are not subject to speedy or natural decay, the Inspector may retain the package for the purpose of prosecution under this Act after giving the trader or his agent or the other person (who has committed the offence) a notice of such seizure'.

Thus, the respondent/Controller alone is entitled to take possession of weight or measure and deal with the same. This means that interim custody of the weight or measure cannot be given to the offender from whom the same is seized.

8. We are afraid that we cannot agree with the above submissions made by the Director General of Prosecution. A reading of the decision of the Apex Court in *Sunderbai Ambalal Desai v. State of Gujarat*, (2003) SCC (Cr.) 1943, will indicate that the guidelines therein regarding interim custody of properties produced in Court are applicable to all categories of properties including vehicles. Of course, it is true that those directions and guidelines are for the purpose of giving interim custody under Section 451 Cr.P.C. till the conclusion of trial after which the property will have to be brought back to the custody of the Court to be made available for final disposal under Section 452 Cr.P.C. Then the further question is whether there is any express or implied bar under the Enforcement Act or the Standards Act or the Rules framed thereunder to exclude the application of Section 451 Cr.P.C. to properties such as tanker lorries like the one produced in this case. Prima facie, it appears to be a far-fetched argument on behalf of the prosecution that the measure in this case not only consists of the tank mounted on the chassis of the lorry but also the chassis. The definition of none of the expressions relied on by the prosecution, prima facie, suggests that it is entirety of the chassis together with the tank mounted on it which constitutes the measure. There is no dispute that what is manufactured and supplied to the buyers of a lorry or bus is the chassis which comes out of the factory and depending on the use of which the buyer intends to put, the required structure either in the form a stage carriage or a tank or a platform with side walls etc. is mounted on the chassis. In the case on hand, it is a fuel tank which has been mounted on the chassis. The tanker lorry together with the tank in the present case was admittedly calibrated.

Merely because for the purpose of calibration it is the lorry together with the tank mounted on it that is necessary, that does not mean that the entirety of the chassis with the tank mounted on it constitutes the measure. Prima facie, there is nothing in the aforesaid Acts or the Rules suggesting such an interpretation.

9. There is no merit in the submission that Section 451 Cr.P.C. stands excluded by necessary implication. Section 4(2) Cr.P.C. makes the provisions of the Cr.P.C. applicable to all offences under any other law but subject to the regulations, if any, contained in any enactment. There is nothing in the Enforcement Act or the Standards Act which provides for a different procedure regulating the manner of investigation, enquiry, trial with regard to the offences punishable under those Acts. Likewise, the overriding provisions under Sections 3 and 4 of the Standards Act and Enforcement Act respectively also operate only when there is anything inconsistent with any other law including the Cr.P.C., Section 451 Cr.P.C. dealing with the power of the Court to grant interim custody of property produced in a case is not at all a provision inconsistent with any of the provisions under both the said enactments. It is for following the procedure under Sections 100 and 102 of the Cr.P.C. that those provisions are made applicable to search and seizure under the Enforcement Act. That does not mean that the other provisions of Cr.P.C. are not made applicable in the case of offences under these Acts. On the contrary, except providing that cognizance of offences shall only be upon a complaint by any of the persons enumerated under Section 63 of the Enforcement Act, the said Act does not provide for the procedure for trial of offences under the Act. Evidently, the Courts trying those offences will have to follow the procedure prescribed by the Cr.P.C. by virtue of Section 4(2) Cr.P.C. We therefore, do not find any bar either expressly or by necessary implication.

10. Equally misconceived is the contention that since the vehicle together with the tank is liable to be forfeited to the Government, interim custody of the vehicle cannot be given. In the decision reported in (2004) SCC (CrI.) 984 cited by the learned Director General of Prosecutions, the Apex Court was considering a statute under which independent proceedings for confiscation could be initiated by the authorised Officer. But the Enforcement Act does not contain any such provision. On the contrary, the Kerala Rules particularly Rule 19(2) relied on by the

Director General of Prosecutions gives a positive indication that where the goods seized under Sections 30 or 31 of the Enforcement Act are not subject to speedy or natural decay, such goods are to be produced by the Inspector before the Court and are to be, after conclusion of the proceedings before Court, taken possession by the Inspector and dealt with in accordance with the orders of the Court. It is during the interregnum period (which may take years in this case since two of the co-accused are still absconding) that interim custody of the vehicle is sought. The directions of the Apex Court in the decision reported in (2003) SCC (Cr.) 1943 are also intended to be applied only during the said period. It was after noticing the fact that a number of vehicles kept in the premises of Police Stations lie unattended and exposed to the ambient weather to become junks day by day, that those directions were issued by the Supreme Court. We therefore, see no reason why the request of the petitioner for interim custody of the vehicle should not be granted.

11. The question which now survives for consideration is as to whether it is the vehicle together with the tank mounted on it or whether it is the vehicle after separating the tank which contains the offending contrivance, that should be the subject matter of interim custody. Certainly, the tank which is fitted with the secret chamber facilitating pilferage of petroleum products cannot be returned to the petitioner. It is admitted that the tanker lorry which was the subject-matter of CrI.M.C. No. 304/04 before this Court was released on interim custody to the petitioner thereafter removing the secret chamber. Hence the interim custody of the vehicle in this case shall also be on similar lines.

In the result, this CrI.M.C. is allowed directing the Trial Court, namely the Judicial Magistrate of First Class, Chittur, Palakkad to release the tanker lorry bearing registration No. KL-7F/6093 to the petitioner on interim custody on his producing documents to prove his ownership of the tanker lorry and after taking sufficient security by way of immovable property or bank guarantee for the value of the tanker lorry to be fixed by the Magistrate and after removing the secret chamber from the tank at the expense of the petitioner and under the supervision of respondent-- Assistant Controller or his departmental nominee and on such terms and conditions which the Magistrate may fix. Before removing the secret chamber,

an inventory and photograph of the tank including the secret chamber shall be taken, if not already taken. The conditions to be imposed shall include the following:

- (i) The petitioner shall keep the tanker lorry released on interim custody in a good, roadworthy and utilisable condition.
- (ii) The petitioner shall file an undertaking before the Magistrate prior to the release of the vehicle that he will not raise any dispute during the trial of the case or otherwise regarding the tank or the secret contrivance fitted inside the tank mounted on the tanker lorry.
- (iii) The petitioner shall produce the released vehicle before the Deputy Controller of Legal Metrology, Central Zone, Ernakulam for inspection once in three months.
- (iv) The petitioner shall produce the released vehicle before Courts as and when required to do so.
- (v) The petitioner shall not use or cause to be used the released vehicle for any illegal or illicit purpose.