

Paulson Vs. Asst. Excise Commissioner

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Court : Kerala

Decided On : Nov-06-2006

Reported in : 2007CriLJ614; 2006(4)KLT965

Judge : S. Siri Jagan, J.

Acts : Kerala Abkari Act, 1077 - Sections 34, 61, 65, 67B, 67B(1), 67B(2) and 67F; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : W.P. (C) No. 17462 of 2004

Appellant : Paulson

Respondent : Asst. Excise Commissioner

Advocate for Def. : D. Anilkumar, Government Pleader

Advocate for Pet/Ap. : C.C. Thomas, Adv.

Disposition : Petition allowed

Judgement :

S. Siri Jagan, J.

1. An interesting question of law arising under the Abkari Act relating to confiscation of vehicles under Section 67B of the Act arises in this case. The question is whether a vehicle which was not actually used in carrying contraband

liquor, but alleged to have been used for abetting the transport of contraband liquor in the sense that the vehicle was used for allowing the culprits to escape from the scene of occurrence, is liable to be confiscated under Section 67-B of the Abkari Act. The facts, in brief, necessary for the disposal of this case may be summarised as under.

2. On 25-7-1998, the Circle Inspector of Police, Chalakudy seized an Ashok Leyland Lorry bearing Registration No. KL-11/B-4068 with 367 cases of illicit Indian Made Foreign Liquor. One person was arrested on the spot. Four others who were allegedly loading the liquor escaped in a Maruti Esteem Car parked near the place of occurrence of the abkari offence. The car did not have a registration number, but contained a board 'For Registration'. Later, a Maruti Esteem Car bearing Registration Number KL-8/L-6777 was seized on 22-3-1999, which was produced before the authorised officer as the car in which the four other accused escaped from the scene of occurrence. The vehicle was temporarily released on security pending further proceedings. On the allegation that the Maruti Esteem Car involved in the case was used for commission of an abkari offence, the said car was subjected to confiscation proceedings by the 1st respondent which ended in Ext. P1 order of confiscation of the vehicle under Section 67-B of the Abkari Act. By Ext.P2 order, the 2nd respondent allowed the appeal filed by the petitioner, who is the owner of the car, on the ground that the involvement of the vehicle in the commission of the offence was not conclusively established. The 3rd respondent-Excise Commissioner took up the matter in revision suo motu and by Ext. P3 order, set aside Ext.P2 order of the 2nd respondent-Addl. Excise Commissioner and restored that of the 1st respondent-Assistant Excise Commissioner.

3. The petitioner challenges Exts. P1 and P3 orders on three grounds, namely:

- (a) The seized vehicle is not involved in any abkari offence as found in Ext. P2.
- (b) Since the vehicle in question was not used in carrying the liquor, the vehicle is not liable to confiscation.
- (c) The suo motu revision initiated by the 3rd respondent is barred by limitation since the same was initiated beyond the 30 days prescribed under Section 67-F.

4. I shall first deal with the second question first since, if the same is found in favour of the petitioner, it may not be necessary to deal with the other two grounds at all.

5. The contention of the petitioner is that the language used in Sections 34, 65 and 67-B of the Abkari Act read together makes it clear that only those vehicles used in the carrying of the contraband liquor only would be liable to confiscation. He would rely the decisions in *Asst. Excise Commissioner v. Vijayan* 1981 KLT 366 and *Sajin v. District Superintendent of Police* 1999 (2) KLT 490 in support of his case.

6. On the other hand, the learned Government Pleader would support the impugned orders contending that the term 'used' appearing in Sections 65 and 67B of the Act should be construed in a wider sense, especially since Section 61 makes abetment of the commission of the offence under the Act punishable and therefore a vehicle which has been used for abetting the escape of the accused is also liable to confiscation. In fact, he also relies on *Vijayan's case* (supra) for the proposition.

7. Let us see how the relevant provisions in the Act deals with the subject. The power to seize contraband liquor, vehicles etc., is contained in Section 34 which reads thus:

34. Offenders may be arrested and contraband liquor, vehicles, etc. seized without warrant:- (1) Any Abkari Officer may arrest without warrant in any public thoroughfare or open place other than a dwelling house any person found committing an offence punishable under this Act and in any such thoroughfare or public place may-

(a) seize and detain-

(i) any liquor or intoxicating drug;

(ii) any materials, still, utensil, implement or apparatus; (iii) any receptacle or package or covering; and

(iv) any animal, cart, vessel or other conveyance, which he has reason to believe to be liable to confiscation under this Act.

b) search any person, animal, cart, vessel or other conveyance, package, receptacle or covering upon whom or in or upon which he may have reasonable cause to suspect any such liquor or intoxicating drug to be, or to be concealed.

(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall apply, in so far as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

Under this Section, the Abkari Officer has power to seize conveyance which he has reason to believe to be liable to confiscation under the Act. Sub-section 1(b) further authorises the Abkari Officer to search conveyance in which he may have reasonable cause to suspect any liquor or intoxicating drug to be concealed.

8. Section 65 details things which are liable to confiscation. That Section reads thus:

65. What things liable to confiscations -In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus in respect or by means of which an offence has been committed shall be liable to confiscation.

Any liquor or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold or toddy lawfully drawn or tapped along with, or in addition to any liquor, intoxicating drug or toddy, liable to confiscation under this section, and the receptacles, packages and coverings in which any such liquor, intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels or other conveyances used in carrying the same, shall likewise be liable to confiscation.

(Emphasis supplied)

9. Section 67-B is the provision authorising confiscation which is extracted below:

67B. Confiscation by Abkari Officers in certain cases:-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force. Where any liquor, intoxicating drug, material, still, utensil, implement or apparatus or any receptacle, package or covering in which such liquor, intoxicating drug, material, still, utensil, implement or apparatus is found or any animal, cart, vessel, or other conveyance used in carrying the same is seized and detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the same before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Commissioner (hereinafter referred to as the authorised officer.)

(2) Where an authorised officer seizes and detains any property specified in Sub-section (1) or where any such property is produced before an authorised officer under that Sub-section and he is satisfied that an offence under this Act has been committed in respect of or by means of that property and that such property is liable to confiscation under this Act, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property and where such property consists of any receptacle or package, the authorised officer may also order confiscation of all contents thereof.

(3) When making an order of confiscation under Sub-section (2), the authorised officer may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed.

(emphasis supplied)

10. Under Section 34, an Abkari Officer has power to seize and detain only conveyances which are liable to confiscation under the Act. The power to search is also only in respect of conveyance in which liquor or intoxicating drug is concealed. Section 65 which details what all things are liable to confiscation

contains two parts. The first part relates to the liquor, drug, materials, still, utensil, implement or apparatus in respect or by means of which an offence has been committed. The second part relates to animals, carts, vessels or other conveyances used in carrying the liquor, intoxicating drug, materials etc. Here the legislature conspicuously used different words in respect of liquor, drug, materials, still, utensil, implement or apparatus on the one hand and conveyances on the other hand. Whereas in the former case, those in respect or by means of which an abkari offence has been committed is liable to confiscation, in respect of the latter only conveyances used in carrying the same only is made liable to confiscation.

11. According to me, the difference in wording is very significant. The legislature has consciously used different wordings for the two classes of things liable for confiscation. In the former, the things enumerated in the earlier part in respect of which or by means of which an offence has been committed is liable to confiscation, whereas in the case of conveyances etc., although the same wording could have been used, the same was limited to only conveyances used in carrying the things mentioned. Again in Section 67B also, in Sub-section (1) thereof, the expression used is 'conveyance used in carrying the same'. Therefore, by the above provisions, the reasonable conclusion would be that those conveyances which have been used in carrying contraband liquor and articles only are liable to be confiscated.

12. While holding so, I am not oblivious of Sub-section (2) of Section 67B. In Sub-section (2) all the properties specified in Sub-section (1), if the authorised officer is satisfied that an offence under the Act has been committed in respect of or by means of that property, is liable for confiscation. But, this Section has to be construed in the light of Section 65 which specifically details the things which are liable to confiscation. Reading these two sections together, I am of opinion that as far as animals, carts, vessels and other conveyances are concerned, those would be liable to confiscation only if the same are used in carrying the contraband articles detailed in Section 65.

13. In Vijayan's case, the Division Bench was actually considering the case of seizure and confiscation of a public transport vehicle. The question in this case

was therefore not directly in issue there. However, the following observation in paragraph 8 therein may have to be noted, which reads thus:

8. The scheme of the Act as disclosed by the provisions, is that a seizure of the conveyance is contemplated and authorised only if the competent officer finds that the conveyance has been 'used' in carrying liquor, intoxicating drug etc. in contravention of the provisions of the Act. It, therefore, becomes necessary for as to consider when a vehicle can be said to be 'used' in carrying contraband liquor, intoxicating drug etc.? In our opinion, a conveyance can be said to be 'used' for carrying the contraband article only if the person, who actually effects such transportation, has at least some degree of minimal control over the operation of the vehicle which may be either by his having obtained it on loan from its owner or on hire (as in the case of a taxi car or contract carriage or vehicles taken on hire for private use including buses, vans and private carrier vehicles) or other similar arrangement. In all such cases, the person effecting the conveyance will be in a position to exercise at least a limited control as to the destination to which the vehicle should be taken or the route along which it should ply etc. In case of this kind the vehicle will be liable for confiscation under Section 67B of the Act on its being found to carry contraband liquor, intoxicating drugs etc.. unless the owner, his agent or the person in charge of the conveyance is able to show that he had taken all reasonable and necessary precautions against such use. It was submitted by the learned Advocate-General appearing on behalf of the appellants that in such cases it is not correct to say that proof of mens rea on the part of the owner/agent/person in charge of the conveyance is a prerequisite for attracting liability to confiscation. There is force in the above contention advanced by the learned Advocate-General.

(emphasis supplied)

Although not directly, this Division Bench decision is to the effect that a vehicle will be liable to confiscation under Section 67B on its being found to carry contraband liquor. Although not rendered exactly on similar set of facts this decision would to a great extent support the view taken by me as above. Since Sajin 's case (supra) does not deal with the confiscation of any conveyance, I am of opinion that it is not

of any help in deciding the issue involved in this case.

14. Learned Government Pleader would want this Court to give a wider meaning to the words 'used in carrying the same' appearing in Sections 65 and 67B to mean 'used in connection with the commission of an offence under the Act'. However much this Court would like to rope in such vehicles also under the ambit of the provisions of confiscation in view of the increasing menace caused by violators of Abkari Laws, the fact that the word 'used' is accompanied by the words 'in carrying the same' and different wordings are used in respect of liquor, drug materials, implements etc. on the one hand and in respect of conveyance etc. on the other. I am afraid that such a wider meaning cannot be attributed to the expression in Sections 65 and 67B as evidently, the intention of the legislature is otherwise and it should be left to the legislature to think of making provisions to rope in such vehicles also, to make the law more stringent for violators.

15. The result of the above discussion is that animals, carts, vessels or other conveyances etc. can be confiscated under the Abkari Act only if the same were actually used for carrying contraband liquor or things as described in Section 65. and not merely if by means of the same, an abkari offence has been committed like in the case of liquor, drug, materials, still, utensil, implement or apparatus.

16. Since the decision on this issue is sufficient to allow this Writ Petition. I am not going into the other two issues raised by the petitioner.

17. Consequently, since the vehicle involved in this case admittedly has not carried any contraband articles as detailed in Section 65, the same is not liable to confiscation. Accordingly, the impugned orders are quashed, the order confiscating the vehicle in question is set aside and respondents are directed to release the security furnished by the petitioner forthwith.

The Writ Petition is allowed as above, but without any order as to costs.