

P. Ravichandran Vs. The Excise Inspector,

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appellant : P. Ravichandran

Respondent : The Excise Inspector,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR THURSDAY, THE 27TH DAY OF NOVEMBER 2014 6TH AGRAHAYANA, 1936 WP(C).No. 9196 of 2013 (Y)

----- PETITIONER(S): ----- P. RAVICHANDRAN, AGED 49 YEARS 23100, VINAYAKA HOUSE, S.K.V. COLLEGE ROAD KANATTUKARA POST, THRISSUR. BY ADV. SRI.K.V.GOPINATHAN NAIR
RESPONDENT(S): ----- 1. THE EXCISE INSPECTOR, THRISSUR RANGE, THRISSUR, PIN:680 001.

2. THE DEPUTY EXCISE COMMISSIONER, THRISSUR, PIN:680 001.

3. THE ADDITIONAL EXCISE COMMISSIONER, (ENFORCEMENT), THIRUVANANTHAPURAM, PIN:695 039.

4. THE EXCISE COMMISSIONER, COMMISSIONER OF EXCISE, THIRUVANANTHAPURAM PIN:695 039. R1-R4 BY ADV. P.FAZIL, GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING BEEN

FINALLY HEARD ON2711-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 9196 of 2013 (Y) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1: COPY OF THE PERMIT ISSUED TO THE PETITIONER ON THE ROUTE THRISSUR-GURUVAYUR-KOZHIKODE VALID UP TO65.2012. EXHIBIT P2: COPY OF THE CRIME AND OCCURRENCE REPORT PREPARED BY THE 1ST RESPONDENT DATED223.2012. EXHIBIT P3: COPY OF THE

JUDGMENT

OF THIS HONOURABLE COURT IN W.A.NO.786/2012 DATED124.2012. EXHIBIT P4: COPY OF THE SHOW CAUSE NOTICE OF THE2D RESPONDENT DATED255.2012. EXHIBIT P5: COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT DATED166.2012. EXHIBIT P6: COPY OF THE

ORDER

OF THE2D RESPONDENT DATED276.2012. EXHIBIT P7: COPY OF THE APPEAL MEMORANDUM FILED BEFORE THE3D RESPONDENT DATED48.2012. EXHIBIT P8: COPY OF THE

ORDER

OF THE3D RESPONDENT DATED2912.2012. EXHIBIT P9: COPY OF THE NOTICE OF THE4H RESPONDENT DATED171.2013. EXHIBIT P10: COPY OF THE

ORDER

OF THE4H RESPONDENT DATED232.2013. RESPONDENT(S)' EXHIBITS: ----- R4(A) : COPY OF THE DRAFT PROCEEDINGS APPROVED BY THE EXCISE COMMISSIONER ON2302.2013 //TRUE COPY// P.A. TO JUDGE JV C.R. P.B.SURESH KUMAR, J.

----- W.P.(C) No.9196 of 2013
----- Dated this the 27th day of November, 2014

JUDGMENT

The Petitioner is the registered owner of a stage carriage operating on the route Thrissur - Guruvayur - Kozhikode. On 22.03.2012, the vehicle of the petitioner was seized by the excise officials for the reason that the same was used for illicit transportation of foreign liquor. According to the excise officials, 57 bottles of foreign liquor were found concealed in the vehicle of the petitioner. Ext.P4 notice was issued thereafter by the second respondent to the petitioner directing him to show cause why his vehicle shall not to be confiscated under Section 67B of the Abkari Act, hereinafter referred to as 'the Act', for short. Petitioner sent Ext.P5 reply to Ext.P4 show-cause notice. Thereupon, the second respondent ordered confiscation of the vehicle of the petitioner as per Ext.P6 order. Ext.P6 order was challenged by the petitioner before the third respondent in an appeal under Section 67E of the Act and the third respondent, as W.P.(C) No.9196/2013 2 per Ext.P8 order, dropped the proceedings initiated against the vehicle of the petitioner, after setting aside Ext.P6 order. Ext.P8 order was set aside by the fourth respondent as per Ext.P10 order, in exercise of his powers under Section 67F of the Act. Ext.P10 order is under challenge in this writ petition.

2. It is beyond dispute that if any offence under the Act is committed by means of a vehicle, the same is liable for confiscation under Section 67B of the Act. Section 67C of the Act dealing with the procedure of confiscation reads thus: Issue of Show cause notice before confiscation under section 67B.- (1) No order confiscating any property shall be made under section 67B unless the person from whom the same is seized- (a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property; (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and (c) is given a reasonable opportunity of being heard in the matter (2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made under Section 67B if the owner of the animal, cart, vessel or other conveyance W.P.(C) No.9196/2013 3 proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicating drug or the material, still, utensil, implement or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself his agent, if any, and the person in charge of the animal, cart,

vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use. Section 67C of the Act prohibits confiscation, if the use of the vehicle for commission of the offence is without the knowledge or connivance of the owner or the person in charge of the vehicle, and if each of them had taken all reasonable and necessary precautions against such use. In other words, the power of confiscation can be exercised only if the authorised officer is satisfied that the vehicle has been used for commission of offence with the knowledge or connivance of the owner himself or the person in charge of the vehicle or that the owner or the person in charge of the vehicle had not taken all reasonable and necessary precautions against such use. An order of confiscation of a vehicle cannot, therefore, be made automatically for the reason that an offence has been committed making use of that vehicle. True, the burden to establish that the vehicle had not been used for commission of the offence with W.P.(C) No.9196/2013 4 the knowledge or connivance of the owner or the person in charge of the vehicle and that both of them had taken all necessary and reasonable precautions against such use is on the owner of the vehicle. However, since the statute does not contemplate confiscation of a vehicle when the same is used for commission of an offence, without the knowledge and connivance of the owner or the person in charge of the vehicle, when they have taken all necessary and reasonable precautions against such use, merely for the reason that the burden to establish the facts referred to in Section 67C(2) of the Act are fastened on the owner, it cannot be said that the authorised officer is not bound to satisfy that the vehicle has been used for commission of offence with the knowledge or connivance of the owner himself or the person in charge of the vehicle or that the owner or the person in charge of the vehicle had not taken all reasonable and necessary precautions against such use. As such, even in the absence of any evidence from the owner, the authorised officer is duty bound to consider all the relevant aspects to satisfy that the vehicle has been used for commission of the offence with the knowledge or connivance of the owner himself or the person in charge of the vehicle or that the owner W.P.(C) No.9196/2013 5 or the person in charge of the vehicle had not taken all reasonable and necessary precautions against such use. The confiscation of a vehicle being a very serious matter involving drastic civil consequences and social stigma, the authorities are duty

bound to exercise the power of confiscation with a high degree of care, caution and circumspection. With the aforesaid understanding of the statutory provisions, I shall proceed to consider the facts of the case.

3. Ext.P6 is the order passed by the authorised officer. According to the authorised officer, the contraband articles were found in the luggage box of the vehicle and since the key of the luggage box of the vehicle was with the conductor of the bus, it has to be inferred that the transportation of the contraband articles was with the knowledge of the conductor of the vehicle. The authorised officer was also of the view that since the contraband articles were loaded into the vehicle at an intermediary point, it has to be inferred that the transportation was with the knowledge of the conductor of the vehicle. It is also stated by the authorised officer that when the contraband articles were carried in four separate packets, the conductor of the vehicle ought to have satisfied with the contents of the W.P.(C) No.9196/2013 6 packets. The authorised officer has also taken note of the fact that a sum of Rs.400/- was found in the pocket of the conductor of the bus and inferred that the said amount represents the consideration for transportation of the contraband articles. It is based on the aforesaid inferences, the authorised officer came to the conclusion that the vehicle of the petitioner is liable to be confiscated.

4. According to me, the inferences made by the authorised officer are not sufficient to justify the order of confiscation. The petitioner is not an accused in the crime registered in connection with the seizure of the contraband articles from his vehicle. True, the conductor of the vehicle engaged by the petitioner is arrayed as an accused. There is no finding in Ext.P6 that the conductor of the vehicle was in charge of the vehicle. Merely for the reason that the conductor of the vehicle had kept the key of the luggage box of the vehicle with him and that he had some money in his pocket, it cannot be said that the contraband articles were transported with his knowledge and connivance. It is common knowledge that the luggages carried by the passengers entering into stage carriages are not being checked by the staff of the vehicle. Though it is W.P.(C) No.9196/2013 7 observed by the authorised officer that the petitioner has not taken any steps to prevent the use of his vehicle from illegal activities, I fail to understand the precautions that could be taken by the owner of a stage carriage bus to prevent the passengers

from carrying contraband articles of this nature. There is nothing on record to indicate that the employees of the petitioner are persons with undesirable antecedents. In the above circumstances, I am of the view that there was no justification at all for the third respondent to order confiscation of the vehicle of the petitioner.

5. That apart, Ext.P6 order was set aside in appeal by the third respondent as per Ext.P8 order. In Ext.P8 order, the third respondent found that the vehicle of the petitioner is not liable to be confiscated in accordance with Section 67B of the Act. In the matter of passing Ext.P8 order, the third respondent had also taken note of the fact that the vehicle is a stage carriage and the same is being used by the general public. The third respondent has also found that the materials are not sufficient to hold that the petitioner was involved in the commission of the offence in any manner. Above all, Ext.P10 order does not indicate the reason based on which the fourth respondent has W.P.(C) No.9196/2013 8 invoked his power under Section 67F of the Act to revise Ext.P8 decision of the third respondent. In the circumstances, I am also of the view that there was no justification for the fourth respondent to revise Ext.P8 order in exercise of his power under Section 67F of the Act. In the result, Ext.P10 order of the fourth respondent is quashed and the writ petition is allowed. SD/- P.B. SURESH KUMAR, JV JUDGE

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