

(2016) 08 KL CK 0049

In the High Court Of Kerala

Case No : Crl. M.C. No. 2126 of 2016.

Abdul Hameed, Aged 37 Years, S/o. Moideen, House No. 1, Belagaum Building, Subhasha Nagar, Karwar Road, Old Hubli, Hubli, Karnataka-580024 - Petitioners/accused No. 3 @HASH State of Kerala, Represented By Sho of Vadakkekara Police Station, Ernakulam Throu

Date of Decision : 25-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 4 KLT 18

Hon'ble Judges : Raja Vijayaraghavan V, J.

Bench : Single Bench

Advocate : Sri. P.B. Ajoy, Advocate, for the Petitioner; Smt. Pushpalatha M.K Public Prosecutor, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Raja Vijayaraghavan V, J. - The 3rd accused in Crime No. 184 of 2016 of Vadakkekara Police Station, is the petitioner in this petition. This petition is filed seeking to quash all further proceedings in the aforesaid crime.

2. The prosecution allegation is that on 8.2.2016 the petitioner and the other accused had transported 12,000/ liters of Kerosene meant for domestic use in a tanker lorry bearing Registration No KA 19 863. Previous information was received by the Sub Inspector of Police, Vadakkekara Police Station as is evidenced by Annexure A FIR and it was the said officer who had seized the Kerosene which was being unlawfully transported. A sum of Rs. 2,30,000/- was also found in the possession of one Moideen who was in the lorry. A crime was duly registered under section 3 B of the Kerosene (Restriction on Use and Fixation of Ceiling Price) order, 1993 (hereinafter referred to as "the Order 1993" for brevity) and section 3 , 7 (1) (a) (i) of the Essential Commodities Act , 1955.

3. On the above allegation, Crime No. 184 of 2016 of Vadakkekara Police Station was registered by the said officer for the offence punishable under sections 3, 7(i) (a), (i) of the Essential Commodities Act, 1955 and rule 3B of the Order 1993.

4. The learned counsel appearing for the petitioner submits that the seizure effected by the Sub Inspector of Police is clearly against the express provisions of the Order, 1993 and on that sole ground the proceedings are liable to be quashed. It is submitted by the learned counsel that specific officers have been notified by the Central Government by virtue of S.O. 65(E) dated 18.1.2005 and the same has been re-notified by the State Government in the Kerala Gazette dated 29.12.2015 as evidenced by Annexure B. The Sub Inspector of Police is not authorised to effect seizure and on that sole ground the proceedings are to be quashed, according to the learned counsel.

5. Heard the learned Public Prosecutor as well. The learned Public Prosecutor would refer to section 10A of the Essential Commodities Act, 1955 and would contend that offense under the Act is cognisable and therefore nothing prevents the Sub Inspector of Police from seizing the vehicle in accordance with law.

6. Clause 9 of the Order, 1993 stipulates that only certain officers are empowered with the power of entry, search and seizure . Annexure B notification also gives the details of certain officers who are authorised to exercise the powers under clause 9. The Sub Inspector of Police is not an authorised officer.

7. I also take note that in Pari Materia provisions are contained in the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000 and this Court as per the decision reported in Abdul Hameed v. SHO, Cheruplasserry Police Station (2013 (2) KHC 386) and also in the unreported decision in CrI.M.C. No.6492 of 2015 dated 15.10.2015 have taken the view that search conducted and FIR registered by the Sub Inspector of Police, who is not an authorised officer under the said order cannot be sustained.

8. A Division bench of the Patna High Court in Ram Chandra Pan Sari v. State of Bihar (LAWS (PAT) 1987-3-48) had occasion to observe that though the offense under section 10 A of the Essential Commodities Act are cognisable, and though any police officer can start investigation on that account under section 156 of the Code of Criminal Procedure on getting knowledge that an offence has been committed, the said process cannot not be started on the basis of an illegal search or seizure.

9. Having regard to the facts and circumstances, I am of the view that the petitioner is entitled to succeed.

10. This petition will stand allowed. All further proceedings against the petitioner in Crime No.184 of 2016 of Vadakkekara Police Station are quashed.