(2021) 01 KL CK 0296

In the High Court Of Kerala

Case No : Criminal Miscellaneous Case No. 5932 Of 2020

Lokanathan M — APPELLANT

Vs

State Of Kerala And Ors — RESPONDENT

Date of Decision : 12-01-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41(1)(d), 102
Indian Penal Code, 1860 — Section 102
Central Goods And Services Tax Act, 2017 — Section 130, 130(2)

Citation : (2021) 01 KL CK 0296

Hon'ble Judges : V.G. Arun, J

Bench : Single Bench

Advocate : Manu Ramachandran, M. Kiranlal, R. Rajesh, T.S. Sarath, Sameer M Nair, C.E. Unnikrishnan, T.R. Renjith

Final Decision : Allowed

Judgement

1. Petitioner is the 2nd accused in Crime No.665 of 2020 of Kozhinjampara Police Station registered for offences under Sections 41(1)(d) and 102

Cr.P.C read with 34 of IPC. The allegation is that, at about 3.15 a.m on 6.10.2020, silver ornaments weighing 11.120 kg valued at around

Rs.3,80,000/- was seized from a lorry bearing No.TN-30-P-3208 and that, on questioning the driver of the lorry (3rd accused), it was revealed that the

3rd accused was not in possession of any bill or other document evidencing payment of tax for the ornaments. That, on the same day, the petitioner

and the 1st accused were apprehended while sitting inside a car and on questioning, it was admitted that they were waiting for the silver ornaments

being brought by the 3rd accused. Thereupon, the crime was registered, the petitioner and the other accused arrested and the silver ornaments seized.

2. Later, the petitioner approached the Judicial First Class Magistrate Court,

Chittoor seeking release of the silver ornaments produced in Crime

No.655 of 2020. While considering the application for release, notice was issued to the State Tax Officer, SGST, Palakkad. The said officer filed a

report stating that the Taxes Department intended to take action under Section 130 of the Central Goods and Services Tax Act, 2017, as the silver

was transported without invoices/bills etc. It was requested not to release the silver, the applicable tax, penalty etc. as mandated under the GST Act

are paid. Thereupon, the petitioner paid an amount of Rs.1,67,824/- and this fact was reported by the State Tax Officer. Since no other offence was

made out against the petitioner, the jurisdictional court passed Annexure A3 order giving interim custody of the silver ornaments to the petitioner

subject to certain conditions. This Crl.M.C is filed aggrieved by condition No.3 in Annexure A3, directing the petitioner to produce the silver

ornaments as and when required and not to alienate the same.

3. Sri.Manu Ramachandran, learned counsel for the petitioner submitted that, the petitioner having complied with the requirements under the GST Act,

the jurisdictional court committed an illegality in imposing condition No.3. It is submitted that, as the petitioner is doing business in silver, he will have to

necessarily sell the ornaments as part of his business and hence, unless the condition is deleted, the petitioner will be put to undue prejudice and loss.

4. The question involved being one related to evasion of tax and consequential action under the GST Act, the Special Government Pleader (Taxes)

was requested to address the court. Sri.C.E.Unnikrishnan, learned Special Government Pleader (Taxes), submitted, on instructions, that the petitioner

having remitted the penalty and the fine in lieu of confiscation as mandated under Section 130(2) of the GST Act, the Taxes Department has no

objection in the silver being released.

5. Sri.T.R.Renjit, learned Public Prosecutor submitted that, since the crime is pending, release of the silver shall be on sufficient security and

conditions.

6. The offences alleged against the accused are under Sections 41(1)(d) and 102 of Cr.P.C. The crime was registered on the accused failing to

produce bills or tax receipts with respect to the silver seized from the lorry. After registration of the crime, the petitioner remitted the penalty and fine

imposed by the Taxes Department. Condition Nos.1 and 2 in Annexure A3 are sufficient to safeguard the interest of the investigating agency.

In the result, the Crl.M.C is allowed by deleting condition No.3 in Annexure A3. It is made clear that the silver ornaments seized shall be released only

on the petitioner complying with condition Nos.1 and 2 in Annexure A3.