(1988) 12 KL CK 0004

In the High Court Of Kerala

Case No : O.P. No. 8620 of 1986

P.K Kaderkutty APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Essential Commodities Act, 1955 — Section 6A(3), 6C(2)
Kerala Raw Cashewnuts (procurement And Distribution) Act, 1981 — Section 15, 19, 20, 20(2), 20(3)

Citation : (1989) 1 KLJ 68

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : T.A. Ramadasan and V. Divakaran Poti, for the Appellant; P V. Mohanan Government Pleader, for the Respondent

Judgement

K. Sreedharan. J.

1. Petitioner is the owner and permit holder of stage carriage bearing registration No. K.L.Z 1338 plying on the road, Tellicherry - Kuttupuzha. On 24-2-1981 at about 10 AM third respondent seized the vehicle with 1288 kgms of raw cashew - nuts packed in 29 bags. The raw cashew nuts belonged to 18 passengers who were travelling in the bus. The seized raw cashew - nuts and the vehicle were produced before the 2nd respondent for initiating proceedings u/s. 20 of the Kerala Raw Cashewnuts (Procurement and Distribution) Act, 1981, (hereinafter referred to as ''the Act''.) Second respondent ordered to sell the raw cashew nuts as provided by Section 20(2) of the Act. On sale a sum of Rs 9,456.50 was realised. A show cause notice as contemplated by Section 21 of the Act was issued to the petitioner calling upon him to submit his objections against the proposed confiscation of the vehicle. The petitioner filed objections contending that he was totally ignorant of the transport of cashew-nuts, that he had issued strict instructions to his employees not to allow transportation of raw cashew-nuts in his vehicle and that the conductor had also taken all necessary and - reasonable precautions against the user of the vehicle in transporting raw

cashew nuts. The 2nd respondent by Ext. P1 ordered confiscation of the vehicle on the basis that the employees who were having control over the vehicle had the knowledge about the contents of 29 bags loaded in the bus. Ext. PI order was challenged before the District Judge Tellicherry, in C.M.A. 35 of 198k The learned District Judge by Ext. P3 judgment dismissed the appeal and confirmed the order of confiscation. That order is under challenge. Third respondent prosecuted 20 persons including 18 passengers in the bus belonging to the petitioner for violation of the provisions contained in Sec. 15 of the Act before the Judicial Second Class Magistrate''s, court Kuthuparamba, in C.C. 780/1982. The learned Magistrate after a full-fledged trial acquitted all the accused by judgment dated 1-9-1983. That decision has become final. In view of the acquittal of persons who transported raw cashew nuts in the bus belonging to the petitioner, it is contended that the order confiscating the vehicle is unsustainable especially in view of the provisions contained in Section 22 (2) of the Act.

2. Notice of this petition was served on all respondents. None has chosen to file counter affidavit in this case. Hence it is to be taken that the petitioner''s contention that the prosecution launched against the passengers who tried to transport raw cashew nuts in the vehicle belonging to the petitioner for the contravention of the provisions contained in the Act has ended in acquittal stands uncontroverted. The learned Government Pleader who appeared for the respondents has not placed before me any material to show that Ext. P5 judgment of the Judicial Second Class Magistrate, Kuthuparamba in C. C. No.780/1982 has not become final. Nor has he got a case, that the said judgment did not relate to the incident which resulted in Ext. P1 and P3 orders against the petitioner.

3. Section 19 of the Act confers power on various officers mentioned therein to seize any raw cashew nut in respect of which they believe that a contravention of the provisions of the Act has been or is being, or is about to be, committed. They are also authorised to search any vessel or vehicle or other conveyance which has been or is being used or is about to be used for the contravention of the provisions of the act. They are further given power to seize the vessel, vehicle or other conveyance used in carrying raw cashew - nuts if he has reasons to believe that they are liable to be forfeited under the provisions of the Act. From Section 19 it is clear that the search or seizure of the vehicle is to be made when it has been or is being or is about to be used for the contravention of the provisions of the Act, or when it is felt that it is liable to be forfeited under the Act. This shows that the vehicle to be seized must be shown to have been used or involved in the commission of an offence under the Act. Transportation of raw cashewnuts except under and in accordance with a permit issued by the authorised officer is an offence punishable under the Act. In the said commission of an offence under the Act, if the vehicle is used then the vehicle is liable to be confiscated u/s. 20 of the Act. Thus Section 20 to come into operation the Revenue Divisional Officer must be satisfied that there has been a contravention of the provisions of Act in the sense that the raw cashew nuts happened to be transported without valid

permit. So, the contravention of the provisions of the Act which gives power to the Revenue Divisional Officer to order confiscation of the vehicle is the transportation of raw cashew nuts against the provisions of the Act. If the prosecution launched against the persons who transported raw cashew nuts on the ground of contravention of the provisions of the Act ends in acquittal, can there be an order confiscating the vehicle thereafter?

4. u/s 20 of the Act, the Revenue Divisional Officer can order confiscation of the raw cashew nuts if he is satisfied that there has been a contravention of the provisions of the Act. He can also order confiscation of the vehicle, vessel or other conveyance used in carrying such raw cashew nuts. In other words, the Revenue Divisional Officer can order confiscation of animal, vehicle vessel or other conveyance only if it is found that it was used in carrying cashew nuts in contravention of the provisions of the Act. For transporting raw cashew nuts in contravention of the provisions of the Act, passengers in the vehicle were prosecuted. That prosecution ended in their acquittal. It thereby means that the passengers who had taken the raw cashew nuts in the bus have not contravened the provisions of the Act. Consequently, it must be taken that the vehicle belonging to the petitioner was not used in carrying raw cashew nuts in contravention of the provisions of the Act.

5 As per Section 20 of the Act, the Revenue Divisional Officer can order the seized raw cashew nuts to be sold to an agent or sub agent appointed for the area at the higher price notified u/s.5 (2) of the Act, Section 20 (3) of the Act deals with the manner in which the sale proceeds are to be dealt with It inter alia states that the money should be paid to the person from whom raw cashew nuts are seized if no order of confiscation is ultimately passed by the Revenue Divisional Officer. If the Revenue Divisional Officer''s order of confiscation is reversed by the District Judge in appeal u/s. 22(1) of the Act then also the owner or the person from whom the cashew nuts were seized must be paid the value It also states that where a prosecution was instituted for the contravention of the Act in respect of which an order of confiscation has been made and the person so prosecuted is acquitted, the value realised on sale must be paid to him. This provision is reiterated in S. 22(2) of the Act. It reads:

Where an order under S. 20 is modified or annulled by the District Judge, or where in a prosecution instituted for the contravention of this Act in respect of which an order of confiscation has been made u/s 20, the person concerned is acquitted, and in either case it is not possible for any reason to return the raw cashew nuts seized, such person shall, except as provided by sub-section (3) of Section 20, be paid the price therefor as if the raw cashew nuts had been sold to the Government with reasonable interest calculated from the day of the seizure of the raw cashew nuts, and such price shall be determined in accordance with the provisions of section 5".

6. The scheme of the Act shows that the raw cashew nuts are to be confiscated if it is dealt with in contravention of the provisions contained in the Act. The order

of confiscation is to be passed by the Revenue Divisional Officer. The person who contravenes the provisions is liable to be prosecuted before the criminal court. If the criminal court acquits the person. then the order confiscating the raw cash nuts will stand automatically varied. The raw cashew nuts or its value will have to be returned to the owner or to the person from whom it was seize. In such a situation where the raw cashew nuts are returned or its value is paid back can the vehicle which was alleged of have been used in carrying such raw cashew nuts be confiscated? If the order of confiscation has already been passed by the Revenue Divisional Officer, can it be maintained subsequent to the acquittal of the person who had transported the raw cashew nut. The Act is silent about this. When it is seen that the vehicle has been confiscated on the finding that it was used in transportation of raw cashew nuts in contravention of the provisions of the Act, the said order of confiscation cannot be sustained if it is found that the transportation of the cashew nuts was not in violation of the Act. If it is held otherwise it will lead to illogical and unjust conclusion. An identical provision contained in the Essential Commodities Act, 1955, was considered by this court in Unni v. State of Kerala (1983 KLT11). Dealing with Section 6A (3) and S. 6C (2) of the Essential Commodities Act, Chandrasekhara Menon, J., observed:

But taking make due note of S. 6A (3) and the scheme of the Act in general in regard to the disposal of property as is clear from S. 6A (3) and S. 6C (2), it is clear that the legislature would have certainly intended that where there is an order of acquittal, the owner of the vehicle who was not even directly connected with the alleged contravention of any order under the Act should get back his vehicle. Under S. 6A (3) of the Act where an essential commodity is sold, the sale proceeds thereof after deduction of the expenses of any such sale or auction or other incidental expenses relating there - to shall be paid to the owner thereof or the person from whom it was seized, where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation had been made under the section, the person concerned is acquitted This makes it implicit that the essential commodity if not already sold shall be given back to the owner or to the person from whom it was so seized on the acquittal of the person concerned in the criminal case. It is therefore apparent from the statutory provision that the vehicle in which such essential commodity was carried should be given back to the owner in such circumstances in spite of an order of confiscation earlier made. Otherwise it will look rather absurd. Any other interpretation of the statutory provision would be illogical and unjust."

I am in respectful agreement with the above observation. Accordingly, I hold that the vehicle which was ordered to be confiscated for the alleged transportation of raw cashew nuts in contravention of the provisions of the Act has to be released when the prosecution launched against the persons who transported the cashew nuts in contravention of the Act are acquitted. In the instant case, 18 passengers who carried with them 1288 kgms of raw cashew nuts in 29 bags in the petitioner''s vehicle were prosecuted for the contravention of the provisions of the Act. That prosecution ended in their acquittal. It means that they had not done anything in contravention of the provisions of the Act. It, therefore follows that the vehicle belonging to the petitioner was never used in carrying the raw cashew nuts in contravention of the provisions of the Act. Consequently the vehicle is not liable to be confiscated. Exts. P1 and P3 orders which took a contrary view are unsustainable. They are set aside. The Petitioner came to this court on an earlier occasion by filing O.P. 1223/1981 challenging the proceedings before the Revenue Divisional Officer. This Court released the vehicle as per order in C.M.P. 4531/1981. That order was in the following terms :

There will be an interim direction to the 1st respondent (R.D.O. Tellicberry) to release the vehicle KLE 1338 to the petitioner on condition that he deposits Rs. 20,000/- and furnishes bank guarantee for Rs. 20,000/- with the 1st respondent".

In this case the petitioner moved C. M. P. No. 28854/1986 praying for stay of operation of Exts. P1, P3 and P4 orders. On 17-11-1986 this court passed the following order:

I am told'' in an earlier proceedings the petitioner has given sufficient security for an amount of Rs. 40,000/- for the release of the vehicle. On condition that the security must continue, I grant an interim stay of the operation of Exts. P1, P3 and P4

Since the order of confiscation has been set aside, I direct the 2nd respondent to release the security to the petitioner at the earliest.

The Original Petition is disposed of in the above terms.

