
(1996) 01 KL CK 0055
In the High Court Of Kerala
Case No : O.P. No. 8866 of 1989-E

P.V. Asoorty

APPELLANT

Vs

Asst. Commissioner, Excise and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Citation : (1996) CriLJ 2139

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : T.G. Rajendran, for the Appellant; A.V.M. Salahudeen, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—The petitioner is the registered owner and permit holder of lorry bearing Registration No. MEG 4986 which was subsequently re-registered as KLN 4986. The vehicle was involved in an abkari offence which ultimately resulted in its confiscation by the first respondent by proceedings dated 28-10-1981. Aggrieved by the order of confiscation the petitioner moved this Court in O.P. No. 6360/82 and this court as per Ext. P1 order in C.M.P. No. 17983/82 ordered the release of the vehicle on the petitioner furnishing a bank guarantee to the tune of Rs. 2 lakhs. Ext. P 2 evidences that the petitioner has furnished the bank guarantee as ordered in Ext. P 1. Ext. P 3 is the order of the first respondent releasing the vehicle to the petitioner. Subsequently, O.P. No. 6360/82 came to be dismissed by judgment dated 31-5-1988 upholding the order of confiscation. After the dismissal of the original petition the first respondent seized the vehicle from the petitioner on 21-7-1989 against which the petitioner filed an appeal and thereafter a revision before the Board of Revenue, but without success. After the termination of the aforesaid proceedings, the first respondent herein approached the bank and encashed the bank guarantee for a sum of Rs. 2 lakhs as evidenced by Ext. P 4 certificate issued by the bank. After encashing the bank guarantee as evidenced by Ext. P

4, the first respondent again seized the vehicle from the petitioner on 24-7-1989 while the vehicle was carrying coffee seeds. The coffee seeds were released to its owner, but the vehicle was under the custody of the first respondent. Ext. P 5 is the proceedings of the first respondent evidencing the seizure of the vehicle. The petitioner thereafter filed Ext. P 6 petition dated 2-8-89 before the second respondent for the release of the vehicle. Since the second respondent failed either to release the vehicle or to refund the amount of bank guarantee encashed by them, the petitioner has approached this Court with the present writ petition seeking a direction to the respondents to return the amount of Rs. 2 lakhs appropriated by them from the bank as per Ext. P 4 or to return the lorry bearing Reg. No. KLN 4986 to the petitioner.

2. Pursuant to the interim order passed by this court in CM. P. No. 28772/89 dt. 20-2-90, lorry bearing Reg. No. KLN 4986 was directed to be released to the petitioner on his furnishing security by way of immovable property to the satisfaction of the first respondent subject to certain conditions mentioned therein. Pursuant to the interim order of this court, the vehicle was in fact released to the petitioner and it is in his custody as on today. The State has filed a counter affidavit justifying their stand.

3. Having heard learned counsel for the petitioner and learned Govt. Pleader for the respondents, I am not satisfied that the stand adopted by the respondents can be justified. No doubt, the vehicle is involved in an abkari offence for which it was confiscated and the confiscation proceedings have been upheld by the judgment of this Court in O.P. No. 6360/82 dated 31-5-1988. The obligation following from the dismissal of the petitioner's earlier original petition is to surrender the vehicle in question before the first respondent, but then, because of the interim order passed by this court in CMP No. 28772/89 dt. 20-2-1990 the petitioner is permitted to retain the vehicle with him. The contention raised by learned counsel for the petitioner before me is that the respondents, after having encashed the bank guarantee, have no jurisdiction to seize the vehicle. I find the contention of the petitioner well-founded. The respondents have no case that apart from the liability of the vehicle being confiscated, the petitioner should also be saddled with any pecuniary liability. The order of confiscation is also conspicuously silent regarding any fine or the like being imposed on the petitioner. The respondents have no case in the counter-affidavit that apart from the confiscation, any other liability is fastened on the petitioner. The result, therefore, is that so long as the bank guarantee is furnished by the petitioner, his liability is only to produce the vehicle as and when directed by the first respondent in pain of enforcement of the bank guarantee, So, in a case where the vehicle is confiscated as is the present case, the petitioner's liability is only to produce the vehicle before the first respondent in terms of the conditions of the bond executed by him as ordered by this Court as a condition for releasing the vehicle to him. Viewed in the above background, I am of opinion that the action of the first respondent in encashing the bank guarantee for a sum of Rs. 2 lakhs as evidenced by Ext. P4 and at the same time enforcing the order of

confiscation against the petitioner is illegal. The petitioner cannot be vexed twice for the same cause in the absence of legal authority for the same. No attempt is seen made in the counter-affidavit to justify the apparent arbitrary action of the respondents in proceeding against the petitioner in a dual manner, namely, confiscation of the vehicle as also by encashing the bank guarantee for a sum of Rs. 2 lakhs which amounts to unjust enrichment by the State.

4. In the result, I allow this original petition and direct the first respondent to return to the petitioner a sum of Rs. 2 lakhs with admissible interest from the date of encashment upto the date of payment on condition that the petitioner produces before the first respondent the vehicle bearing Reg. No. KLN 4986 in a running condition within a week from today. Payment shall be effected within one month from the date of production of the vehicle.

Original Petition is allowed as above.