

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 19TH DAY OF JANUARY 2023 / 29TH POUSHA, 1944

WP(CRL.) NO. 72 OF 2022

PETITIONER:

FIROZALAVI T.V.
AGED 42, S/O. AHAMMED HAJI, THAZHATHUVEETIL,
KUTTALLOOR, OORAKAM, KIZHUMURI,
MALAPPURAM-676519
BY ADVS.
R.ROHITH
HARISHMA P. THAMPI

RESPONDENTS:

- 1 STATE OF KERALA
SECRETARY, HOME AFFAIRS, MAIN BLOCK, SECRETARIAT,
THIRUVANANTHAPURAM, PIN-695001.
- 2 DEPUTY SUPERINTENDENT OF POLICE,
OFFICE OF DEPUTY SUPERINTENDENT OF POLICE,
THRISSUR RURAL RANGE, THRISSUR RD,
KUNNAMKULAM, PIN-680503
- 3 THE DRUG DISPOSAL COMMITTEE,
OFFICE OF DEPUTY SUPERINTENDENT OF POLICE,
THRISSUR RURAL RANGE, THRISSUR RD,
KUNNAMKULAM, PIN-680503
REPRESENTED BY ITS MEMBER
- 4 SUB INSPECTOR OF POLICE,
PUDUKKAD POLICE STATION, PUTHUKKAD,
THRISSUR-680301.
BY ADVOCATE GENERAL OFFICE KERALA
SR.PP-SRI.RENJIT GEORGE

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
19.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

A. BADHARUDEEN, J.

W.P.(CrI).No. 72 of 2022

Dated this the 19th day of January, 2023

JUDGMENT

This writ petition (Criminal) has been filed under Article 226 of the Constitution of India, and the prayers herein are as under:

"I. Issue a writ of mandamus or such other writ, order or direction directing the 3rd respondent to release the Ford Figo car bearing Reg No. KL-65-L-3810 to the petitioner.

II. call for records leading to Exhibit P5 order issued by the Drug Disposal Committee and issue a writ of certiorari or such other writ, order or direction quashing the same.

III. Issue any order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. A pertinent legal question to be decided is: whether vehicle piloting or accompanying another vehicle, which is transporting Narcotic Drug and Psychotropic Substances to be

held as vehicle used as conveyance in carrying the contraband so as to confiscate the same under Section 52-A of the Narcotic Drugs and Psychotropic Substances Act ?

3. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor representing the State.

4. The prosecution allegation in Crime No. 404/2021 of Pudukkad Police station is that, accused Nos. 1 to 4, with intention to make unlawful enrichment, brought 154.3 kilograms of Ganja from outside the State to Kerala State for the purpose of sale as part of conspiracy hatched between them at Dream Stay lodge. The further allegation is that, the 3rd accused who brought KL-58-T-2312 tempo van from its RC owner for rent had kept Ganja in special racks made in the tempo van and transported the same to Kerala from outside Kerala.

5. The prosecution would allege further that, while the 1st accused was transporting the Ganja in the tempo van bearing registration No. KL-58-T-2312 along with the 2nd accused, the 3rd and 4th accused had given pilot to the said vehicle by traveling in a car bearing registration No. KL-65-L-3810 from Valayar, Palakkad towards Kerala and the contraband seized at about 14.15 hours on 01.08.2021, when they reached near Paliyekkara

Toll Plaza. Accordingly, accused Nos. 1 and 2 were arrested along with the contraband and the tempo van bearing registration No. KL-58-T-2312 and the contraband were seized by the Police. Thereafter accused Nos. 3 and 4 were also arrested and the car bearing registration No. KL-65-L-3810 was taken into custody, on the allegation that accused Nos.3 and 4 given pilot to the vehicle bearing registration No. KL-58-T-2312. In this matter, the prosecution alleges commission of offences punishable under Sections 20(b)II(c), 25 and 29(1) of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred as 'NDPS Act' for short).

6. When the petitioner herein, who is the RC owner of car bearing registration No. KL-65-L-3810, moved an application before the Drugs Disposal Committee, claiming that the vehicle had no involvement in the crime on the specific assertion that the prosecution records would not justify transport of contraband in the said vehicle, the Drugs Disposal Committee, as per the order dated 06.11.2021 rejected the said contention as per Ext.P5 order. It is in this context, the petitioner has approached this Court for the above reliefs.

7. It is argued by the learned counsel for the petitioner

that, the petitioner who is the RC owner of the car bearing registration No. KL-65-L-3810 has no involvement in the said crime. Further, the prosecution has no case that the contraband was seized from this car while using the same as conveyance to transport the contraband.

8. It is argued by the learned counsel for the petitioner that, as per Section 60(3) of the NDPS Act, conveyance or vehicle used in carrying any narcotic drugs and psychotropic substances shall alone be liable to be confiscated. He also would submit that, the prosecution has no case that the contraband was carried in the car bearing registration No. KL-65-L-3810 or the same was used as a conveyance to carry the contraband. Therefore, the car is not a subject matter of confiscation. He has placed two decisions of this Court in support of his contentions.

9. The first one is the decision reported in ***Thausif Ahammed Bengre v. State of Kerala [2018 (1) KHC 598 parallel citation(s): 2018(1) KHC 598 : 2018 (1) KLD 286 : 2018(1) KLT 881]***. In this decision it has been held that:

"Section 60(3) of the NDPS Act provides that any conveyance or vehicle used in carrying any Narcotic Drugs or Psychotropic Substances shall be liable to confiscation. For a property to be confiscated, or for a vehicle or

conveyance to be confiscated under the NDPS Act, it must be a vehicle or conveyance used for carrying or transporting Ganja."

10. The second decision is the one reported in ***Smart Logistics (M/s), Kozhikode v. State of Kerala and Others [2020(5) KHC 139 parallel citation(s) : 2020 (5) KHC 139 : 2020(2) KLD 492 : 2020 (5) KLT 298 : 2020 (4) KLJ 493]***. In the said decision this Court in paragraph 38 held as under:

"38. A close scrutiny of the above provision shows that a conveyance shall become liable to confiscation only when it is "used in carrying" any narcotic drug or psychotropic substance or controlled substance. It further follows that seizure of a conveyance is contemplated and authorised only if the competent officer finds that the conveyance has been "used in carrying" any contraband substance under the Act. Therefore, the question arises what is the meaning of the expression "used in carrying"."

11. Whereas, it is submitted by the learned Public Prosecutor that, as per Section 52-A of the NDPS Act, introduced with effect from 29.05.1989, which deals with disposal of seized narcotic drugs and psychotropic substances, car bearing registration No.KL-65-L-3810 is a subject matter of confiscation.

He also would submit that, when a vehicle has been seized while piloting a vehicle, where contraband was carrying, the same is akin to conveying the contraband and therefore the said vehicle also would come within the purview of Section 60(3) of the NDPS Act and the same is a subject matter of confiscation under Section 52-A of the NDPS Act.

12. The learned Public Prosecutor also pointed out Section 63 of the NDPS Act, which provides that in the trial of offences under the NDPS Act, whether the accused is convicted or acquitted or discharged, the Court shall decide whether the article or things seized under the Act is liable to confiscation under Section 60 or 61 or 62 and if decides that the article is so liable it may order confiscation accordingly. Even though the legislature introduced the said Section 52-A of the Act with effect from 29.05.1989, the legislature did not repeal Sections 60, 61, 62 or 63 and retained the same as procedure to be followed, for the purpose of confiscation.

13. Section 60 of the NDPS Act deals with liability of illicit drugs, substances, plants, articles and conveyance to confiscation. As per Sub Section (3) of Section 60, it has been provided as under:

"60. xxx

(1) xxx

(2) xxx

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use."

14. The words used in Section 60(3) is any animal or conveyance used in carrying any narcotic drug or psychotropic substances. After interpreting the said wordings in the decision reported in ***Thausif Ahammed Bengre's*** case (supra) and ***Smart Logistics (M/s), Kozhikode's*** case (supra), this Court held that, in order to confiscate a vehicle as conveyance used for carrying narcotic drugs and psychotropic substances must be a vehicle or conveyance used for carrying or transporting Ganja.

15. If the argument advanced by the learned Public Prosecutor is accepted to hold that, vehicle accompanying or piloting another vehicle carrying the contraband, also as a

vehicle carrying the contraband, to treat the same as conveyance, the same is something beyond the statutory intent provided under Section 60(3) of the NDPS Act.

16. To put it otherwise, when the statute says an animal or conveyance used in carrying any narcotic drugs or psychotropic substances alone is subject matter of confiscation, the horizon of the legislative intent cannot be extended to a wider magnitude to hold that the vehicle piloting or accompanying another vehicle, which carried the contraband also as one carrying the contraband. Therefore, the vehicle piloting or accompanying another vehicle transporting Narcotic Drug and Psychotropic Substances cannot be held as vehicle used as conveyance in carrying the contraband and the said vehicle is not a subject matter of confiscation under Section 52-A of the NDPS Act.

17. In the present case, as per the prosecution records and as per the report of the Investigating Officer, it is crystal clear that, initially the vehicle which carried the contraband and the accused Nos. 1 and 2 were arrested. Subsequently, accused Nos. 3 and 4 who alleged to have piloted the said vehicle by moving in front of the said vehicle were arrested and the vehicle

also taken into custody and according to the prosecution the same also is a subject matter of confiscation.

18. Since the vehicle involved in the present case, cannot be held as a conveyance used in carrying any narcotic drug or psychotropic substances by interpreting Section 60(3) of the NDPS Act, the contention raised by the learned Public Prosecutor to the effect that the said vehicle bearing registration No. KL-65-L-3810 also is a subject matter of confiscation cannot be accepted. If so, the vehicle is liable to be released on imposing appropriate conditions. In view of the above, Ext.P5 order of the Drug Disposal Committee stands set aside and the car bearing registration No. KL-65-L-3810 is ordered to be released to the petitioner on conditions. Accordingly, this writ petition (criminal) is allowed.

Therefore, the Drug Disposal Committee is directed to produce the car bearing registration No. KL-65-L-3810 before the Special Court, Thrissur, within ten days from the date of receipt of a copy of this judgment and on such production the vehicle is ordered to be released on interim custody on conditions:

- i. The car bearing registration No. KL-65-L-3810 shall be released to the petitioner on production of original RC Book and Insurance Certificate for verification before the

learned Special Court along with its attested copies and photographs showing its number on the front side and rear side, after serving copies of the same to the Public prosecutor also.

ii. After being satisfied with the ownership of the car bearing registration No. KL-65-L-3810, the learned Special Court shall release the same to the petitioner on executing bond for Rs.3,00,000/- (Rupees Three Lakh Only) by the petitioner with two solvent sureties, each for the like amount to the satisfaction of the Court below, undertaking to produce the vehicle before the Court, as and when directed.

iii. The petitioner shall also file an affidavit stating that, the vehicle shall not be sold or encumbered without the prior permission of the Special Court or till disposal of the case.

It is specifically made clear that, release of the vehicle on the finding that the vehicle cannot be held as conveyance used to transport the contraband, the same shall not absolve the criminal culpability of accused Nos. 3 and 4, for the said reason alone.

Sd/-

**A. BADHARUDEEN
JUDGE**

APPENDIX OF WP(CRL.) 72/2022

PETITIONER'S EXHIBITS :

- EXHIBIT P1** A TRUE COPY OF THE RC PARTICULARS OF THE FORD FIGO CAR BEARING REGISTRATION NO. KL-65-L-3810.
- EXHIBIT P2** A TRUE COPY OF THE FIR ALONG WITH FIS DATED 01.08.2021 IN CRIME NO.404/2021 OF PUTHUKAD POLICE STATION.
- EXHIBIT P3** A TRUE COPY OF THE SEIZURE MAHASAR CAR BEARING REGISTRATION NO. KL-65-L-3810 FILED BEFORE THE HON'BLE DISTRICT AND SESSIONS COURT.
- EXHIBIT P4** A TRUE COPY OF THE REMAND REPORT DATED 07.09.2021 IN CRIME NO.404/2021 FILED BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT, IRINJALAKKUDA.
- EXHIBIT P5** A TRUE COPY OF THE ORDER DATED 06.11.2021 IN F.NO.710/TDR/DCB/2021/R ISSUED BY THE 2ND AND 3RD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL