



2023/KER/41888

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 25TH DAY OF JULY 2023 / 3RD SRAVANA, 1945

WP(CRL.) NO. 259 OF 2023

PETITIONER:

SAFIR P. ,
AGED 28 YEARS, S/O.ALI,
POOKATH HOUSE,
PADINJARANGADI, KAPPUR,
PALAKKAD DISTRICT, PIN - 679552

BY ADVS.
SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENTS:

THE COMMISSIONER OF CUSTOMS (PREVENTIVE)
CATHOLIC CENTRE, BROADWAY,
ERNAKULAM, KOCHI, PIN - 682031

BY SMT.A.K.PREETHA, SC

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 10.07.2023, THE COURT ON 25.07.2023 DELIVERED
THE FOLLOWING:



“C.R.”

BECHU KURIAN THOMAS, J.

W.P.(CrI) No.259 of 2023

Dated this the 25th day of July, 2023

JUDGMENT

Can a vehicle be seized by the Customs on an apprehension that it may be used as a means of transport of smuggled goods? The aforesaid question arises for consideration in this writ petition.

2. Petitioner is the owner of a motor car bearing registration No.KL-52-R-9498. Petitioner claims that he is residing in Dubai and doing business there. He alleges that he had handed over the car to one of his family friends as there was none to use his car at his house. Petitioner left for Dubai on 09.06.2022 and returned only on 22.11.2022. On his return, he learnt that his vehicle was seized from the parking area of the Cochin International Airport on 26.07.2022 by the Customs authorities. On further enquiry, it was revealed that two persons had travelled in his car to the airport to receive a passenger carrying 931.73 gms of gold, which was apparently smuggled into the country.

3. Immediately on getting information of the seizure of his vehicle,



petitioner filed an application for its release. In the meantime, petitioner realised that the seizure of the vehicle was illegal as, even according to the customs, the vehicle was not used as a means of transport or as a carriage for smuggled goods. The writ petition was thus filed seeking release of his vehicle and for a declaration that the seizure is illegal and that his car cannot be confiscated under law.

4. A statement as directed by this Court has been filed by the respondent pointing out that based on an intelligence report received by the Customs Department on 26.07.2022, regarding the arrival of two persons in a Car bearing registration No.KL-52-R-9498 for collecting smuggled gold, the officials of the customs intercepted the vehicle at Cochin International Airport. At the time of interception, there were two persons inside the vehicle and one person by the name of Sri.Abdulrahman standing outside the car. The gold weighing 931.73 gms and having a market value of Rs.45,96,224/- was seized from Sri.Abdulrahman, who allegedly smuggled the gold from Doha, on flight IX-476. Indian currency amounting to Rs.75,000/- was seized from the persons sitting inside the car.

5. The respondent has also mentioned that, in a statement given under section 108 of the Customs Act, 1962 (for short 'the Act'), the persons sitting inside the car informed that Sri.Muhammed Jabir (to whom the petitioner had handed over the car for use) had asked them to reach



the Cochin International Airport to collect the gold from Sri. Abdulrahman and also handed over the cash to be paid as remuneration for smuggling the gold, which was intended to be transported and handed over to Sri.Muhammed Jabir. In his statement under section 108 of the Act, Sri.Abdulrahiman, who was the person standing outside the car, alluded that one Sri.Shameer had handed over the gold to him at Doha, and he was asked to handover the same at Cochin International Airport for remuneration. According to the respondent, Sri. Muhammed Jabir was the person in possession of the vehicle, and questioning him is crucial to identify the modus operandi of smuggling gold and its transportation, and therefore detention of the vehicle is essential. The respondent also pointed out that petitioner must take recourse to the effective remedy under section 122 of the Act, and therefore writ petition was sought to be dismissed.

6. I have heard Sri. Babu S.Nair, learned counsel for the petitioner as well as Smt.A.K.Preetha, learned Standing Counsel for the respondent.

7. The principle of availability of alternative remedies is only a rule of discretion. Considering the admitted facts and the legal issue raised, this Court is of the opinion that the jurisdiction under Article 226 can be exercised in the present case to bring a quietus to the dispute raised, instead of relegating the petitioner to the remedy of adjudication under section 122 of the Act.



8. Concededly, at the time when the vehicle was intercepted, there was no gold inside. The further admitted case of the Department is that the person who carried the gold arrived from Doha, and the smuggled gold was about to be collected at the parking area of Cochin International Airport. Therefore, evidently, till the seizure, the smuggled gold had not entered the car at any point in time. Further, petitioner, as the owner of the vehicle, is not alleged of any involvement in smuggling.

9. Section 106 of the Act confers power upon the Department to stop and search vehicles if it is being or is about to be used in the smuggling of any goods or in the carriage of any smuggled goods. The power to search is distinct from the power to seize. On a reading of section 106 of the Act, it is evident that power is conferred upon the officers to search a vehicle if they suspect that the vehicle is involved in smuggling or other offences under the Act. Significantly, the said power to search does not confer a right to seize the vehicle on suspicion.

10. Section 110(1) of the Act gives the power to seize vehicles or documents, or things. Section 110(1), (2) and (3) to the extent relevant (excluding the provisos) reads as follows:

“S.110. Seizure of goods, documents and things

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months



of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

(3) The proper officer may seize any document or thing which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.”

11. A perusal of the above provisions indicates that the right to seize goods arises only when the goods are liable for confiscation. Only goods that are liable for confiscation can be seized under the Act. In other words, the power to seize, under the Act, is intrinsically connected with the power of confiscation. The word ‘goods’ is defined in section 2(22) of the Act as including vehicles. The Statute has distinctly distinguished ‘documents and things’ from ‘goods’ in the provision, which is evident from a reading of sub clause (1) and sub clause (3) of the section.

12. The power to confiscate conveyances, which includes vehicles, is dealt with in section 115 of the Act. Section 115 reads as follows:-

“115. Confiscation of conveyances

(1) The following conveyances shall be liable to confiscation:—

- (a) any vessel which is or has been within the Indian customs water, any aircraft which is or has been in India, or any vehicle which is or has been in a customs area, while constructed, adapted, altered or fitted in any manner for the purpose of concealing goods;*
- (b) any conveyance from which the whole or any part of the goods is thrown overboard, staved or destroyed so as to prevent seizure by an officer of customs;*
- (c) any conveyance which having been required to stop or land under section 106 fails to do so, except for good and sufficient cause;*
- (d) any conveyance from which any warehoused goods cleared for exportation, or any other goods cleared for exportation under a claim for drawback, are unloaded, without the permission of the proper*



officer;

(e) any conveyance carrying imported goods which has entered India and is afterwards found with the whole or substantial portion of such goods missing, unless the master of the vessel or aircraft is able to account for the loss of, or deficiency in, the goods.

(2) Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal 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 conveyance or animal:

PROVIDED that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be.

Explanation.—In this section, “market price” means market price at the date when the goods are seized.”

13. Undoubtedly, section 115(1) has no application in the present case. Section 115(2) of the Act renders a vehicle liable for confiscation if it was ‘used as a means of transport’ in the smuggling of goods or in the carriage of any smuggled goods. The word ‘*used as a means of transport*’, in its ordinary sense, partakes the character of use in the past or in the present. However, the question is whether, in the contextual setting of the provision, the aforementioned words would include apprehended future use. The admitted case of the Department is that the smuggled goods had never found a place inside the car, nor had the person carrying the smuggled goods entered the car, either in the past or in the present. The Department alleges that two persons came to collect the smuggled goods



at the Airport and that they were intercepted even before the gold was collected by them. The said circumstance only indicates a possible future use of the car as a means of transport of the smuggled goods.

14. The power of confiscation is a penal provision. The courts ought not to ascribe a meaning broader than that it ordinarily bears, especially in the case of a penal provision. As is settled through a long line of decisions, including those in **R. Kalyani v. Janak C. Mehta and Others** [(2009) 1 SCC 516] and **U.Suvetha v State by Inspector of Police and Another** [(2009) 6 SCC 757], penal provisions are to be strictly construed. In the absence of any definition provided by the special statute, the ordinary meaning must be ascribed to the words used in the statute. Therefore the words '*used as a means of transport*' in section 115(2) of the Act can only be interpreted as '*already used as a means of transport*' or as '*presently being used as a means of transport*'. The possibility for future use of the vehicle as a means of transport of smuggled goods cannot be brought within the purview of the power of confiscation.

15. If a possible future use of a vehicle as a means of transport for smuggling goods confers a power of confiscation of such a vehicle, that power will be unbridled, absolute and unregulated. The discretion to seize or not to seize a vehicle for apprehended future use as a means of transport of smuggled goods will confer an unregulated discretion devoid of any clarity for its exercise. Such conferment of vast and unguided



powers will even fall foul of Article 14 of the Constitution of India. Therefore the power of confiscation under section 115(2) of the Act can arise only if the vehicle was actually used or is being used for smuggling goods and not for apprehended use or future use. Hence a vehicle cannot be seized by customs on an apprehension that it may be used in future as a means of transporting smuggled goods.

16. In view of the above declaration, the seizure of the vehicle bearing registration No.KL-52-R-9498 owned by the petitioner is illegal and the respondent shall release the vehicle to the petitioner immediately.

The writ petition is allowed as above.

**Sd/-
BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX

PETITIONER'S/S' EXHIBITS

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| EXHIBIT P1 | TRUE COPY OF THE REGISTRATION
CERTIFICATE OF THE VEHICLE OF THE
PETITIONER |
| EXHIBIT P2 | TRUE COPY OF THE RELEVANT PAGES OF THE
PASSPORT OF THE PETITIONER |
| EXHIBIT P3 | TRUE COPY OF THE ORDER OF THE RESPONDENT
DATED 16-1-2023 |
| EXHIBIT P4 | TRUE COPY OF THE APPLICATION SUBMITTED
BY THE PETITIONER DATED 20-2-2023 |