

When Drug Was Recovered On Driver's Body Search, It Can't Be Held That Vehicle Was Used For Conveying Contraband : Kerala High Court

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

A. BADHARUDEEN; J.

W.P.(CrI).No.303 of 2022; 28 November, 2022

WILSON C.C. versus STATE OF KERALA

Petitioner: by Advs. T. Sanjay, P.P. Niyas, Sanil Kumar G., Midhun R.

Respondent: GP- G. Sudheer

J U D G M E N T

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

i. Call for the records leading to Ext P3 order and issue a writ of certiorari or any other appropriate writ order or direction quashing Ext P3 order passed by the Court of Sessions, Ernakulam (Special Court under NDPS Act).

ii. Issue a Writ of Mandamus or any other appropriate writ, order or direction directing the Court of Sessions, Ernakulam (Special Court under NDPS Act) to release the car bearing registration number KL 46 W 6400 to the Petitioner. iii. Grant such other relief as this honorable court deem fit in the interest of justice.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the State.

3. Ext.P3 order is under challenge in this writ petition, whereby the learned Special Judge, Ernakulam (Special Court under NDPS Act), dismissed an application filed by the writ petitioner herein, who is the owner of a Maruti Car bearing registration number KL 46 W 6400, involved in Crime No. 158 of 2022 of Thrikkakara Police Station, seeking grant of interim custody of the above car.

4. The petitioner filed a petition before the Special Court through his power of attorney holder under Section 451 of Cr.P.C. and zealously contended before the Special Court that, the vehicle never used as conveyance to transport the contraband and therefore the same is not a subject matter of confiscation. Accordingly, release of the vehicle was sought for.

5. The learned Special Judge, relied on the report of the Investigating Officer and found that, the vehicle could not be released since the materials would suggest that the vehicle was used to convey the contraband, recovered from the accused.

6. The learned Special Judge also given emphasis to the decision of this Court reported in ***Shajahan v/s Inspector of Excise, Excise Enforcement & Anti Narcotic Special Squad Malappuram & Others (2019 (5) KHC 401)*** to justify dismissal of the petition.

7. The learned counsel for the petitioner reiterated the same contention before this Court, while canvassing the release of the vehicle at the instance of the owner. It is pointed out that, even on a meticulous reading of the recovery mahazar, the same could, in no

way, suggest that the vehicle was used as conveyance, so as to hold that the vehicle is a subject matter of confiscation, to deny its interim custody.

8. The learned Public Prosecutor while supporting the finding of the learned Special Judge, placed the case diary containing the copy of the recovery mahazar. The same would suggest that, when the accused while driving the car was searched doubting him, he was found possessing 0.06 grams of LSD stamp in the wallet kept in his pocket. Accordingly he was nabbed and LSD stamp was recovered, after complying the mandate of Section 50 of the NDPS Act, since body search was involved. It is true that, the accused was intercepted while he was driving the car. It is on the said premise the prosecution would allege that, the vehicle has been used as a conveyance.

9. Crucial question that arises for consideration is, when the contraband was recovered on body search from a person who has been driving a vehicle, is it fair to hold that, the vehicle also has been used for the purpose of conveying the contraband ?

10. It is true that, in the decision reported in **Shajahan's case** (supra) this Court held that, if the vehicle is a subject matter of confiscation, the power of the Court to consider a claim under Section 451 of Cr.P.C stands denuded. However, ratio would apply to a case where, there should be materials to hold that, the vehicle has been used as a conveyance to carry the contraband. When a person who is driving a vehicle alone, found to be on suspicious circumstances, when searched, if contraband was taken from his body after complying the mandate under Section 50, it is not safe to hold that, the vehicle also has been used as conveyance so as to make the same as a subject matter of confiscation. In such circumstances, it has to be held that, the contraband was kept in secrecy by the accused in his body though he had travelled in the vehicle. Viewing so, it cannot be said that, in the present case, the vehicle has been used as conveyance and the vehicle is a subject matter of confiscation.

11. In view of the matter, the learned Special Judge went wrong in dismissing the application. Therefore, Ext.P3 order stands set aside. Consequently the writ petition is allowed. The vehicle is ordered to be released on interim custody on conditions:

i. The vehicle shall be released to the petitioner on production of original RC Book and Insurance Certificate for verification before the Special Judge 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. Thereafter, the learned Special Judge shall release the car to the petitioner on executing bond for Rs.1,00,000/- (Rupees One Lakh Only) by the petitioner with two solvent sureties, each for the like amount to the satisfaction of the Special Court, 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 without the prior permission of the Special Court or till disposal of the case.