

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

TUESDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2023 / 25TH ASWINA, 1945

WP(CRL.) NO. 529 OF 2021

**PETITIONER:**

SABU JOHNY,

BY ADVS.C.DHEERAJ RAJAN  
ANAND KALYANAKRISHNAN

**RESPONDENTS :**

- 1 STATE OF KERALA,  
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF  
EXCISE, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.
- 2 DEPUTY EXCISE COMMISSIONER,  
EXCISE DIVISIONAL OFFICE CIVIL STATION, D-BLOCK  
GROUND FLOOR, CIVIL STATION P.O., KOZHIKODE  
DISTRICT-673 020.
- 3 EXCISE INSPECTOR,  
EXCISE RANGE OFFICE, VADAKARA, KOZHIKODE  
DISTRICT-673 101.

BY PP Smt. Seená C

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 06.03.2023, THE COURT ON 17.10.2023 DELIVERED  
THE FOLLOWING:

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**MARY JOSEPH, J.**

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W.P.(Crl.) No. 529 of 2021  
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Dated this the 17<sup>th</sup> day of October, 2023

**JUDGMENT**

Writ petitioner is the Managing Director of a company namely E.V.M. Passengers Cars India Pvt. Ltd, engaged in rent a car business. The company is having a licence issued on 27.09.2019, validity of which is till 26.09.2024. True copy of the licence is produced alongwith the petition on hand as Ext.P1. EVM wheels shown in Ext.P1 is only the trade name of the Company referred to above.

2. Petitioner company is the owner of Nissan Terrano Diesel (MT) Motor car bearing Registration No.KL-07-CP-7386. True copy of the certificate of registration of the vehicle is produced alongwith the petition on hand as Ext.P2. The car was booked by one Mr. Jinil Mathew for one day and six hours on a rent of ₹1,790/-. Pursuant to the booking, a

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rental agreement was also entered into between the petitioner and Mr. Jinil Mathew specifying the location, date and time of delivery as well as return of the vehicle. True copy of the document evidencing the booking of the car with the rental agreement is produced alongwith the petition on hand as Ext.P3. As per Ext.P3, Mr. Jinil Mathew has to return the vehicle at 7 p.m. on 20.04.2021. At about 12.30 p.m. on 20.04.2021 the car aforesaid was seized by the Vadakara Excise Officials alleging that 162 litres of Indian Made Foreign Liquor (for short 'IMFL') was found transported in the vehicle and therefore O.R. No.78/2021 was registered against Jinil Mathew for offences punishable under Sections 58 & 67B of the Abkari Act, 1077 (for short 'the Act').

3. Pursuant to the registration of the crime, the vehicle was confiscated in accordance with the provisions of the Act. Petitioner approached the 2<sup>nd</sup> respondent and filed a written representation dated 23.04.2021 accompanied by the vehicular documents and documents pertaining to the rental

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agreement in respect of the vehicle, true copy of which is also appended to the petition on hand as Ext.P4. On the very same set of facts, a written complaint was also preferred against Mr.Jinil Mathew before the Station House Officer, Cheranallore, true copy of which is appended to the petition on hand as Ext.P5.

4. The 2<sup>nd</sup> respondent issued a notice dated 06.05.2021 to the petitioner to show cause why the vehicle shall not be confiscated to the Government on 07.05.2021. True copy of the notice is produced alongwith the Writ Petition as Ext.P6. The notice though was issued on 06.05.2021, it was sent to the petitioner only on 07.05.2021 on which date he was called upon to show cause. The petitioner received the notice only on 03.06.2021. Therefore, W.P.(C) No. 13653/2021 was preferred before this Court seeking for issuance of a writ of mandamus or any other appropriate writ, order or direction to the 2<sup>nd</sup> respondent to finalise the proceedings after affording an opportunity to the petitioner

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to submit his grievances and other reliefs. This Court passed an order in the above Writ Petition directing the 2<sup>nd</sup> respondent to afford opportunity to the petitioner of being heard prior to passing of any orders. True copy of the order is appended to the Writ Petition as Ext.P7.

5. 2<sup>nd</sup> respondent after hearing the petitioner passed an order on 17.12.2021 to confiscate the vehicle, without properly evaluating the documents produced by the petitioner. True copy of the order passed by the 2<sup>nd</sup> respondent is also produced alongwith the Writ Petition as Ext.P9. In the above context that, the petitioner has filed the present writ petition seeking for reliefs as follows :

i. Call for the records leading to Ext.P9 order and issue a writ of certiorari or any other appropriate writ, order or direction quashing Ext.P9 order passed by the 2<sup>nd</sup> respondent herein.

ii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 2<sup>nd</sup> respondent to release the Nissan Terrano Diesel (MT) Motor Car bearing Registration No.KL-07-CP-7386 owned by the petitioner herein.

iii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the 1<sup>st</sup> respondent to issue necessary

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guidelines to properly maintain or allow the owners to maintain the vehicles seized by the officers under Section 67B of the Abkari Act.

iv. Grant such other relief as this Honourable Court deem fit in the interest of justice.”

6. Petitioner’s claim that he was the Managing Director of EVM Passengers Pvt. Ltd dealing with the business of hiring out cars based on demands made by parties. It was established from Ext.P1 that the Company is having a valid driving licence to do the business. It is also established from Ext.P3 that vehicle bearing Registration No.KL-07-CP 7386 and owned by the above company was booked by one Mr.Jinil Mathew and later taken therefrom for a rent of ₹1,790/-. It was evidenced furthermore that Ext.P3 rental agreement was also executed. As per the agreement Mr.Jinil Mathew was directed to return the vehicle at 7 p.m. on 20.04.2021. But, at about 12.30 p.m., it was informed as seized by the Vadakara Excise Officials for transporting 162 litres of IMFL in it. On its basis a crime was also registered at Vadakara Excise Range as O.R. No.78/2021 against

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Mr.Jinil Mathew. The vehicle was also seized. Ext.P9 order was passed by the 2<sup>nd</sup> respondent to confiscate the vehicle. That order is now sought to be set aside by the writ petitioner who is the owner of the vehicle ordered to be confiscated.

7. Ext.P6 is a show cause notice issued by the 2<sup>nd</sup> respondent to the writ petitioner calling upon him to show cause why vehicle bearing Registration No. KL-07-CP 7368 seized in Crime No.78/2021 shall not be confiscated. Writ Petitioner had filed Ext.P7 before this Court contending that Ext.P6 though issued and he was asked to show cause on 07.05.2021 against passing of an order of confiscation, it was served on him only on 03.06.2021. Therefore, in the Writ Petition, he seeks for a further opportunity to show cause. On being convinced of the truth in the contention of the writ petitioner that due to belated service of Ext.P6, he lost opportunity to show cause, this Court directs the writ petitioner to promptly make his presence available before

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the 2<sup>nd</sup> respondent on 14.07.2021 or any other day that may be fixed in that behalf and the latter to grant him an opportunity to submit his objection before passing of an order on merit.

8. It is found from the plea raised in the Writ Petition that the writ petitioner appeared before the 2<sup>nd</sup> respondent on 14.07.2021 as directed by the order and his statement was also recorded on that day itself. The 2<sup>nd</sup> respondent after delving on the versions furnished before it by the writ petitioner passed Ext.P9 order.

9. It is found stated in Ext.P9 order that the admin of the Company was heard and it was informed that the Company was engaged in the business of renting out cars, that about 70 numbers of cars are involved in the business and that from the news in the Television, he came to know about the seizure of the vehicle by the Excise Officials for transporting IMFL and that the Company has no role in the alleged transaction. On the basis of the above information



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notice was issued to Sri.Sabu Johny, the Managing Director of the Company to appear before the 2<sup>nd</sup> respondent, but he did not appear. Therefore, not being convinced of the truth of the versions furnished by the admin on 14.07.2021 and on being convinced from the available materials that the registered owner of the vehicle failed to take any reasonable precautions against the use of the vehicle for illegal transportation, the vehicle was ordered to be confiscated to the Government under Section 67B of the Act. It is stated furthermore in Ext. P9 that writ petitioner can prefer appeal against the above order, if he is aggrieved of it, before the Additional Excise Commissioner (Enforcement), Thiruvananthapuram within 30 days from the date of receipt of it. If the auction proceedings in respect of the vehicle are required to be stayed, a copy of the appeal shall be furnished to the Deputy Excise Commissioner, Kozhikode, swearing on those aspects also.

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10. Writ petitioner was also permitted, if he intends to take permanent custody of the vehicle, to file an application before the Deputy Excise Commissioner within 15 days of the receipt of the order alongwith ₹5,50,000/-, as the cost of the vehicle valued by the Mechanical Engineer towards fine and thus to obtain its custody.

11. The Case Diary pertaining to O.R. No. 78/2021 of Vadakara Police Station is called for. The copy of the certificate of registration of the vehicle is obtained by the Investigating Officer and found incorporated in the Case Diary. The registered owner of the vehicle is the company referred to above. The vehicle was described as a new one and a motor cab (rent). Copy of a letter issued by the writ petitioner herein to the Deputy Excise Commissioner, Kozhikode on 23.04.2021 is also found incorporated in the Case Diary. The authority was found specifically informed that the company is licenced to do the business of renting out cars and that the car bearing Registration No. KL-07 CP-

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7386 ( Nissan Terrano) was taken out on rent by one Mr.Jinil Mathew at 1 P.M on 20.04.2021. The vehicle was also requested to be returned to the writ petitioner after being convinced in necessary enquiries about the truth of the facts informed. A system generated rental agreement manual, customer I.D and delivery time photo were also found furnished alongwith.

12. The rental agreement executed by the company with Mr. Jinil Mathew, the customer who has taken the car on a rental basis, copy of which is furnished is also found accompanied by a document wherein the terms and conditions to be followed by the customer are provided. It is found specifically provided under the caption "Member's / Customer's Responsibility" as follows:

"If a Wheels Member/Customer is violating the law or Wheels rules, for example by overspeeding or driving drunk, the Member/Customer will be responsible for all damage, liability, and fines and could face legal action. For vehicle rental details kindly refer '**Fleet and Tariff**' in our website. Penalties that can be levied if Member/Customers violate certain EVM wheels".

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'EVM wheels' was pleaded in the Writ Petition as the trade name of the Company 'EVM Passenger Cars India Pvt. Ltd.'

13. It is clear from the above discussion that the vehicle in question was rented out by the writ petitioner to Mr.Jinil Mathew at the relevant time for his personal purpose and while in latter's use that the vehicle was seized alleging involvement in unauthorised transportation of 10 boxes each containing 12 bottles of IMFL. Since the alleged offence was allegedly committed while the vehicle involved was in the custody of the customer of the vehicle who had taken it on rent, involvement of any nature could not be attributed to the writ petitioner who is the owner of the vehicle. A specific term is also incorporated in the rental agreement that the customer has to face legal actions in case of violations of law and he alone would be responsible for that.

14. It is found that the investigation into the allegations in O.R No.78/2021 by the Vadakara Excise Range

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was commenced as early as on 20.04.2021. Nowhere in the Case Diary, the involvement of the writ petitioner in the alleged offensive act which formed basis for registration of O.R. No.78/2021 is reported.

15. Therefore, writ petitioner has only given the car to Mr.Jinil Mathew on rental basis after execution of a rental agreement. While it was in use by Mr.Jinil Mathew, the alleged incident was occurred. The vehicle was given to Mr.Jinil Mathew after execution of a rental agreement. Terms and conditions to be followed by the customer while the vehicle was given for his use on rent are also found incorporated. Condition extracted above is a warning to the customer not to use the vehicle in violation of legal provisions. It infact has the impact of taking of a precaution by the writ petitioner who was the owner of the vehicle. In the crime Mr.Jinil Mathew was the sole accused. During the course of investigation also evidence has not been collected, liable to add the name of the Company also as an

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accomplice of Mr.Jinil Mathew. That shows his non-involvement in the crime.

Section 67C is apposite extraction hereunder :

**“67C. Issue of show cause notice before confiscation under section 67B.** - (1) No order confiscating any property shall be made under section 67B unless the person from whom the same is seized -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such property;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(2) Without prejudice to the provisions of sub-section (1), no order confiscating any animal, cart, vessel or other conveyance shall be made under section 67B if the owner of the animal, cart, vessel or other conveyance proves to the satisfaction of the authorised officer that it was used in carrying the liquor or intoxicating drug or the material, still, utensil, implement or apparatus or the receptacle, package or covering without the knowledge or connivance of the owner himself his agent, if any, and the person in charge of the animal, cart, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use. ”

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It has been held in **Jacob Thomas v. Asst. Excise Commissioner, Palakkad** [2015 (4) KLJ 561] :-

“14. It is for the owner of the vehicle to explain in positive terms under what circumstances he lost possession or control over the vehicle and in what circumstances – if at all he had knowledge – the vehicle had been put to illegal use. Unless such explanation is forthcoming from the owner of the vehicle, it cannot be said that the respondent officials have to presume a lack of knowledge on the part of the owner of the vehicle in terms of Section 67C of the Act.”

It has been held in **Sasidharan v. State of Kerala** [1980 KLT 671] :

“The enquiry envisaged by S.67C(1) of the Act is also not a mere formality. Under the provision, the show-cause notice shall mention the grounds on which the property is proposed to be confiscated, and the person to whom it is issued is to be afforded an opportunity to submit a written representation, and further, a reasonable opportunity of being heard. I do not think that merely by putting certain questions to the person who in response to the show cause notice, appears at the time of hearing and eliciting from him answers thereto which will obviously be what have been already stated in the written representation submitted

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by him earlier and in denial of the grounds mentioned in the show cause notice, the authorised officer complies with the requirement of affording him a reasonable opportunity to be heard unless he is informed of the materials on which the grounds are rested and is afforded an opportunity to controvert these materials, it cannot be said that a reasonable opportunity of being heard in the matter has been given to him. Except on being informed of as to who all are the attesting witnesses and what they said on being interrogated by the authorised officer, the person who appears for hearing pursuant to a show cause notice issued under S.67C(1)(a) to him, would not be in a position to comment on their evidence or to contradict. In such cases he is not afforded reasonable opportunity of being heard in the matter.”

It has been held in **Rajesh K. v. Sub Inspector of Police, Palakkad and Others** [2015 (4) KHC 253] :

“There is no gainsaying the fact that under S.67B of the Act, the Police authorities have got every power to confiscate the vehicle. It is further to be seen that the very S.67C(2) of the Act provides that the power of confiscation is discretionary and the authorities can exercise it only under circumstances warranting confiscation.”



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In the case on hand the writ petitioner himself has averred that notice to show cause against confiscation has been served on him later to the time fixed for the purpose. For a vehicle to be confiscated, it ought to have been established that the owner of the vehicle has prior knowledge or in the alternative, he is a party to the offence, which connotes his active involvement. Once it is indicated from the materials furnished by the writ petitioner that the owner of the vehicle is devoid of any knowledge or that he has connived with the persons who actually were evidenced as illegally transporting any contraband for the sole reason that the vehicle is involved in the offence, he cannot be penalised by ordering to confiscate his vehicle.

16. Therefore, on the basis of the materials furnished by the writ petitioner, the materials collected by the investigating officer in O.R. No.78/2021 of Vadakara Police Station and in the legal backdrop, this Court finds every justification in taking a view that the writ petitioner has no

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involvement in the offensive acts in the crime and also that necessary precautions have been taken by him while causing the accused in the crime to sign the rental agreement and thereby subjecting him to abide by the terms and conditions appended thereto.

17. The 2<sup>nd</sup> respondent is found to have not applied its mind to the materials made available to it by the writ petitioner while passing Ext.P9 order. The order deserves to be quashed.

In the result, the writ petition is allowed and proceedings passed by the 2<sup>nd</sup> respondent with respect to the vehicle in question and incorporated with the writ petition as Ext.P9 is quashed. As a consequence, the vehicle bearing Registration No. KL-07-CP 7386 is ordered to be given in the permanent custody of the writ petitioner.

Sd/-  
**MARY JOSEPH,  
JUDGE.**

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**APPENDIX OF WP (CRL.) 529/2021**

PETITIONER'S EXHIBITS :

- Exhibit P1 THE TRUE COPY OF THE LICENSE NO.  
7/MCAB/STA/2019.
- Exhibit P2 THE TRUE COPY OF THE CERTIFICATE OF  
REGISTRATION OF NISSAN TERRANO DIESEL (MT)  
MOTOR CAR BEARING REGISTRATION NUMBER KL-07-  
CP-7386.
- Exhibit P3 THE TRUE COPY OF THE DOCUMENT SHOWING THE  
BOOKING OF NISSAN TERRANO DIESEL (MT) MOTOR  
CAR ALONG WITH THE RENTAL AGREEMENT ENTERED  
INTO BETWEEN THE PETITIONER AND JINIL MATHEW.
- Exhibit P4 THE TRUE COPY OF THE REPRESENTATION DATED  
23/04/2021.
- Exhibit P5 THE TRUE COPY OF THE WRITTEN COMPLAINT DATED  
15/05/2021 PREFERRED BY THE PETITIONER AGAINST  
JINIL MATHEW BEFORE THE STATION HOUSE OFFICER,  
CHERANELLOOR.
- Exhibit P6 THE TRUE COPY OF THE NOTICE DATED 06/05/2021  
ISSUED BY THE 2ND RESPONDENT HEREIN TO THE  
PETITIONER.
- Exhibit P7 THE TRUE COPY OF THE ORDER DATED 09/07/2021  
PASSED BY THIS HON'BLE COURT IN WPC NO.  
13653/2021.
- Exhibit P8 THE TRUE COPY OF THE PHOTOGRAPH SHOWING THE  
VEHICLE PARKED INSIDE THE PREMISES OF THE  
EXCISE OFFICE.
- Exhibit P9 THE TRUE COPY OF THE ORDER NO.  
EDOKKD/229/2021-D7 DATED 17/12/2021 PASSED BY  
THE 2ND RESPONDENT.

//TRUE COPY//

Sd/-

P.S. to JUDGE