

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

MONDAY, THE 17TH DAY OF JANUARY 2022 / 27TH POUSHA, 1943

WA NO. 1202 OF 2021

AGAINST THE JUDGMENT IN WP(C) 26180/2018 DATED 29.06.2021

OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS IN THE WRIT PETITION:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, EXCISE
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
- 2 DEPUTY COMMISSIONER OF EXCISE
OFFICE OF THE DEPUTY COMMISSIONER OF EXCISE,
PATHANAMTHITTA-689645.
- 3 ADDITIONAL COMMISSIONER OF EXCISE (ENFORCEMENT)
EXCISE HEADQUARTERS, NANDAVANAM, VIKAS BHAVAN
P.O., THIRUVANANTHAPURAM-695033.

BY ADV.

V.MANU, SPL.GOVERNMENT PLEADER

RESPONDENT/WRIT PETITIONER IN THE WRIT PETITION:

NAVARU SWAPNA REDDY
W/O N. SRINIVAS REDDY, R/O H NO.3-4-68, SUBASH
CHANDRA BOSE STATUTE, HYDERGUDA VILLAGE, RAJENDRA
NAGAR MANDAL, RANGA REDDY DISTRICT, TELUNGANA-
500043.

BY ADV. NANDAGOPAL S.KURUP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
17.01.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

Writ Appeal No.1202 of 2021

Dated this the 17th day of January, 2022

JUDGMENT

P.B.Suresh Kumar, J.

This appeal is directed against the judgment dated 29.06.2021 in W.P.(C) No.26180 of 2018. Appellants are the respondents in the writ petition. Parties and documents are referred to in this judgment, as they appear in the writ petition.

2. The petitioner belongs to the State of Telangana. She owns a Toyota Innova Crysta car bearing registration No.TS-07-FE-8889. On 23.12.2017, while the husband of the petitioner and a few of his friends were travelling in the said vehicle, it was intercepted and seized by the Police at Chalakkayam alleging that they were found carrying 3.3 litres of Indian Made Foreign Liquor intended for sale in the State of Telangana, flouting the order issued by the Government in exercise of the power under Section 9 of the Abkari Act (the Act) prohibiting transportation of

liquor to the limits of the Chalakkayam Excise Range, within which they were found. A crime was also registered simultaneously against the husband of the petitioner and others under Sections 55(a) and 58 of the Act read with Rule 9 of the Foreign Liquor Rules, 1953 (the Rules) and also Section 118(e) of the Kerala Police Act. The police officer who seized and detained the vehicle of the petitioner later produced the same before the second respondent, the authorised officer, in terms of Section 67B(2) of the Act. The second respondent, thereupon, after issuing notice to the petitioner, ordered confiscation of the vehicle under the said provision as per Ext.P7 order. The petitioner challenged Ext.P7 order in appeal, and in terms of Ext.P9 order, the third respondent affirmed Ext.P7 order. The writ petition was one instituted challenging Exts.P7 and P9 orders. The case set out by the petitioner in the writ petition was that the allegations do not make out any of the offences alleged against the husband of the petitioner and others; that the allegations, at any rate, do not indicate that any offence has been committed in respect of or by means of the vehicle and that at any rate, the competent authority ought not have exercised the discretion to order confiscation of the vehicle having regard to the nature of the allegations.

3. The learned Single Judge took the view that in the light of the provisions contained in Section 67C(1) of the Act, it was obligatory for the authorised officer before ordering confiscation of the vehicle to issue notice to the person from whom the same was seized, and insofar as the said requirement has not been complied with, the matter needs to be considered afresh. Accordingly, the learned single judge set aside Exts.P7 and P9 orders and directed the authorised officer to consider the matter afresh after issuing notice to the husband of the petitioner as well. The respondents are aggrieved by the said decision of the learned Single Judge and hence, this writ appeal.

4. Heard the learned counsel for the petitioner as also the learned Government Pleader.

5. The learned Government Pleader argued that the view of the learned Single Judge that it is obligatory on the part of the authorised officer to issue notice to the person from whom the property sought to be confiscated has been seized, before ordering confiscation, is unsustainable. According to the learned Government Pleader, the expression “the person from whom the same is seized” contained in Section 67C(1) of the Act would include the owner of the property as well and the Act does not contemplate notice to be given to the person from whom the

property is seized if he is not the owner of the property. It was also argued by the learned Government Pleader that insofar as notice of the proceedings was given to the petitioner who is the owner of the property, the learned Single Judge was not justified in holding that there was non-compliance of the requirement in Section 67C(1) of the Act. It was also argued by the learned Government Pleader that at any rate, insofar as the petitioner had no case in the confiscation proceedings that notice needs to be issued to the person from whom the vehicle was seized, the learned Single Judge ought not have interfered with the order of confiscation. Alternatively, it was also argued by the learned Government Pleader that even assuming that notice was required to be given to the person from whom the vehicle was seized in terms of Section 67C(1), in the absence of any case for the petitioner that any prejudice has been caused to her on account of the omission on the part of the authorised officer in not issuing such notice, interference with the order of confiscation was improper.

6. Per contra, the learned counsel for the petitioner supported the judgment, pointing out that in a proceedings under Section 67B(2) of the Act, it is obligatory for the competent authority to satisfy that an offence under the Act has

been committed in respect of or by means of the property sought to be confiscated before ordering confiscation, and notice to the person from whom the property has been seized is therefore necessary for the said purpose. According to the learned counsel, it is on account of the said reason, Section 67C(1) mandates that no order confiscating any property shall be made under Section 67B unless the person from whom the same is seized is given notice. Alternatively, it was argued by the learned counsel that the case on hand is one in which the learned Single Judge ought to have interfered with the order of confiscation and there is, therefore, no reason to interfere with the impugned judgment.

7. As we found *prima facie* force in the contention of the learned Government Pleader that the view taken by the learned Single Judge in passing the impugned judgment is unsustainable in law, with a view to decide the writ petition itself in exercise of the power under Section 4(1) of the Kerala High Court Act in the event of accepting the said contention, instead of remitting the matter to the learned Single Judge for consideration again, we have directed the learned counsel for the parties to make submissions as regards the merits of the writ petition also. The learned counsel for the petitioner as also

the learned Government Pleader accordingly advanced arguments as regards the merits of the writ petition.

8. As regards the merits of the writ petition, the learned counsel for the petitioner pointed out that the quantity of Indian Made Foreign Liquor allegedly carried in the vehicle of the petitioner was well within the limit prescribed and the case happened to be registered under Sections 55(a) and 58 of the Act read with Rule 9 of the Foreign Liquor Rules, since the liquor was intended for sale in the State of Telangana and the vehicle was found in a prohibited area in terms of a notification issued by the Government under Section 9 of the Act. According to the learned counsel, possession of Indian Made Foreign Liquor intended for sale in another State by itself will not make out the offence punishable under Section 58 of the Act, unless it is shown that the possession of the liquor was with the knowledge that the same was unlawfully imported. Likewise, it was argued by the learned counsel that in order to establish the offence under Section 55(a) of the Act read with Rule 9 of the Rules, there should be material to show that the Indian Made Foreign Liquor involved in the matter is brought into the State from a place outside the State by the accused themselves and merely for the reason that a person is found to be in possession of

Indian Made Foreign Liquor intended for sale in another State, it cannot be concluded that they have committed the said offence. It was argued by the learned counsel that there is absolutely no material to show that the husband of the petitioner and his friends have carried the Indian Made Foreign Liquor from the State of Telangana with the knowledge that the same was unlawfully imported to the State. The submission of the learned counsel therefore was that the materials on record do not *prima facie* disclose the offences alleged against the accused which is a mandatory prerequisite for ordering confiscation of the property seized from them. Alternatively, it was also argued by the learned counsel that even assuming that there exist *prima facie* materials to show that the offences alleged have been committed by the accused, the allegations do not show that the offences have been committed by means of the vehicle. It was also argued by the learned counsel that at any rate, the power conferred on the authorised officer under Section 67B(2) of the Act to order confiscation of the property is discretionary and the authorised officer ought not have exercised the discretion vested in him to order confiscation in the case on hand.

9. As regards the merits of the writ petition, the learned Government Pleader submitted that in the light of the

provisions contained in Section 67C(2), insofar as the petitioner is the owner of the vehicle sought to be confiscated, she is entitled to object to the confiscation only if she establishes that the vehicle was used for carrying the liquor without her knowledge or connivance and that she and the person in charge of the vehicle had taken all reasonable and necessary precautions against such use. Insofar as the liquor was carried in the vehicle by none other than the husband of the petitioner herself, the petitioner cannot be heard to contend that the vehicle is not liable to be confiscated. It was also submitted by the learned Government Pleader that the materials on record would show unambiguously that the offences alleged have been committed by the accused by means of the vehicle. It was further submitted by the learned Government Pleader, placing reliance on the decision of this Court in **State of Kerala v. Sukumara Panicker**, 1987 KHC 457 that having regard to the object of the Act, the authorised officer cannot be found fault with for having ordered confiscation of the vehicle on the facts disclosed in the case.

10. We have examined the arguments advanced by the learned counsel for the parties on either side.

11. The first and the foremost question to be

examined is whether the authorised officer exercising the power under Section 67B(2) of the Act is obliged to issue notice to the person from whom the property sought to be confiscated has been seized and detained before ordering confiscation of the same, if he is not the owner of the property. Sections 65, 67B and 67C of the Act which are relevant in the context read thus:

65. What things liable to confiscation. - In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus in respect [or by means] of which an offence has been committed shall be liable to confiscation.

Any liquor or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold or toddy lawfully drawn or tapped along with, or in addition to any liquor, intoxicating drug or toddy, liable to confiscation under this section, and

the receptacles, packages and coverings in which any such liquor, intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels or other conveyances used in carrying the same, shall likewise be liable to confiscation.

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67B. Confiscation by Abkari Officers in certain cases.

- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any liquor, intoxicating drug material, still, utensil, implement or apparatus or any receptacle, package or covering in which such liquor, intoxicating drug, material, still, utensil, implement or apparatus is found or any animal, cart,

vessel, or other conveyance used in carrying the same is seized and detained under the provisions of this Act, the officer seizing and detaining such property shall, without any unreasonable delay, produce the same before an officer authorised by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Excise Commissioner (hereinafter referred to as the authorised officer).

(2) Where an authorised officer seizes and detains any property specified in sub-section (1) or where any such property is produced before an authorised officer under that sub-section and he is satisfied that an offence under this Act has been committed in respect of or by means of that property and that such property is liable to confiscation under this Act, such authorised officer may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of such property and where such property consists of any receptacle or package, the authorised officer may also order confiscation of all contents thereof.

(3) When making an order of confiscation under sub-section (2), the authorised officer may also order that such of the properties to which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed.]

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.”

There cannot be any doubt that the person affected by the order of confiscation would be the owner of the property sought to be confiscated. The only provision in the Act providing for notice in the proceedings for confiscation is the provision contained in Section 67C(1) of the Act. The said provision is only to the effect that no order confiscating any property shall be made under Section 67B unless the person from whom the same is seized is given notice of the proceedings. Although Section 67C(1) does not specifically provide for notice to the owner of the property, Section 67C(2) provides that no order confiscating any animal, cart, vessel or other conveyance shall be made under Section 67B, if the owner of the same proves to the satisfaction of the

authorised officer that it was used in carrying the contraband without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the same and that each of them had taken all reasonable and necessary precautions against such use. It is evident from the provisions contained in Section 67C(2) that the expression “the person from whom the same is seized” contained in Section 67C(1) refers to the person who is interested in the property sought to be confiscated, for it cannot be inferred that the Act contemplates confiscation of a property without issuing notice to its owner who is interested in the property, especially when the provision contained in Section 67C(2) confers a right to the owner of the property to claim release of the vehicle seized even if the authorised officer finds that an offence has been committed under the Act in respect of or by means of the property owned by him and that the property is liable for confiscation. In other words, the expression “the person from whom the same is seized” contained in Section 67C(1) cannot be understood in its literal meaning. If the provision is not one to be understood in its literal meaning, the question remaining to be considered is whether the expression “the person from whom the same is seized” would include the person from whom the

property has been seized also. Going by the sweeping provision contained in Section 65 of the Act, it may not be easy for the authorised officer to identify the ownership of all the properties referred to in Section 65 and in such cases, notice of the confiscation proceedings could be served only on the person from whom the property is seized, treating him as the owner of the property. It can thus be seen that what is intended by the statute by the expression “the person from whom the same is seized” is that no order confiscating any property shall be made unless notice is given either to *de facto* or *de jure* owner of the property, as the case may be, and the Act does not provide for notice to any person other than the *de facto* or *de jure* owner of the property. Needless to say that the Act does not provide for notice to the person from whom the property sought to be confiscated has been seized, if he is neither the *de facto* nor the *de jure* owner of the property. It is all the more so since none of the rights of the person from whom the property has been seized, whether he is the accused in the case or not, is adjudicated in the proceedings under Section 67B of the Act.

12. Sub-section (4) of Section 14 of the Tamil Nadu Prohibition Act, 1937 dealing with the identical provision contained in Section 67B of the Act uses the expression “the

owner or the person from whom such animal, cart, vessel or other vehicle is seized” in the place of the expression “the person from whom the same is seized” in the Act. The learned Single Judge placed reliance on the said provision in the Tamil Nadu Prohibition Act, 1937 to reinforce the stand that notice need to be issued to the person from whom the property has been seized also, before ordering confiscation of the same. Merely for the reason that the expression “the person from whom such animal, cart, vessel or other vehicle is seized” is also mentioned in the said statute, it cannot be inferred that the intention of the Act is to give notice to the person from whom the property has been seized before ordering confiscation, in addition to its owner. The view expressed by the learned Single Judge that the purpose of the said requirement is to enable the confiscating authority to satisfy himself that an offence has been committed in respect of or by making use of the property cannot also be accepted, for the subjective satisfaction insisted in terms of the provision in Section 67B(2) on the said aspect is only for the purpose of ordering confiscation of the property, and not for anything else. The question formulated for decision is thus answered in the negative.

13. We shall now deal with the rival contentions

raised by the parties as to the sustainability of the order of confiscation and the order affirming the same in appeal. It can be seen from the provisions contained in Sections 65, 67B and 67C of the Act that if an offence is committed under the Act in respect of or by means of a property, the same is liable for confiscation in accordance with the procedure laid down in Section 67C(1). As such, before ordering confiscation of a property, it is obligatory for the authorised officer to satisfy that an offence under the Act has been committed in respect of or by means of that property and that the property in respect of or by means of which the offence is committed under the Act is liable for confiscation. The expression "whether or not a prosecution is instituted for the commission of such offence" in Section 67B(2) of the Act would show that the power conferred on the authorised officer to order confiscation of property is irrespective of the fact as to whether a prosecution has been launched for the commission of the offence alleged. Similarly, the word "may" used in Section 67B(2) would indicate that the power conferred on the authorised officer to order confiscation of property is discretionary in as much as he is not obliged to order confiscation, even if he is satisfied that an offence has been committed under the Act in respect of or by means of that

property. Obviously the reason is that the power aforesaid being a harsh one, the intention of the statute is not that there shall be confiscation of property in all cases where offence is committed in respect of or by means of the property. It is all the more so since the Act provides that contravention of some of the provisions therein would be punishable with fine and some other would be punishable with both fine as well as imprisonment for long durations and uniform application of the provisions would not only work serious injustice to the parties, but also make the provisions amenable for challenge as violative of the doctrine of equality. It is now trite that where exercise of a power is dependent upon the satisfaction of certain requirements on the part of the conferee of the power, such satisfaction is to be arrived at by him not subjectively, but by applying an objective test, the standard and measure of such test being that of a reasonable person acting reasonably having regard to all the relevant facts, for the statute does not contemplate confiscation of property in every case where an offence is committed in respect of or by means of the property referred to in Section 65 of the Act [See **Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli**, (2007) 6 SCC 81 and **Clariant International Ltd. v. Securities & Exchange Board of India**, (2004) 8 SCC 524].

Since the provisions in Section 67B of the Act operate independent of Section 67C, it is not to be taken that when an owner does not invoke the provision in Section 67C, there should be confiscation under Section 67B. If the owner invokes Section 67C and he is able to show the matters mentioned therein, irrespective of whether the property could have been confiscated, no order of confiscation could be passed because of the operation of Section 67C [See **Sasidharan v. State of Kerala**, 1980 KLT 671 and **Vamadevan Pillai v. State of Kerala and others**, 1982 KLT 518].

14. With the aforesaid principles in mind, let us examine the correctness of the orders impugned in the writ petition. The relevant portion of Ext.P7 reads thus:

“I have gone through the case records and the circumstances of the crime carefully. The Innova Cresta Car TS 07 FE 8889 was seized by the Police Party for illegal transportation of 3.3 litres of IMFL from a prohibited and protected area on which it marked as for sale in Telungana only and also a pistol with 11 cartridges. The seized liquor is permitted to sale only in the state of Telungana. The manufacture Transport and marketing of liquor in the state of Kerala is under the monopoly of State Government. No liquor from other state can be transported or used in the state of Kerala without remitting Excise Duty. In this respect no duty has been received by the state exchequer and the seized liquor should be treated as substitute beverages and hence attract section 58 of abkari Act.

More over the main offence committed by accused is that the liquor was seized from the prohibited area surrounding holy Sabarimala vide GO(P) No 130/2017 TD and also declared as highly protected area as per GO(P) No 133/2017 Home SRO. No 655/2017 by Government of Kerala. On which the Government agencies have made vide propaganda in all south Indian languages and in English. The seizure of liquor in the prohibited area attracts Section 55 of Abkari Act. It is very clear and evident that the vehicle was used for the illegal transportation of Liquor through the prohibited area.”.

The relevant portion of Ext.P9 reads thus:

"8. കേസ് റിക്കോർഡുകളും മറ്റും വിശദമായി പരിശോധിച്ചതിൽ നിന്നും കേരള സർക്കാർ വിജ്ഞാപന പ്രകാരം മദ്യവും മറ്റ് ലഹരി പദാർത്ഥങ്ങളും കൊണ്ടുവരുന്നതും കൈവശം സൂക്ഷിക്കുന്നതും നിരോധിച്ചിട്ടുള്ള സ്ഥലത്തുവെച്ച് വാഹന പരിശോധന നടത്തവെയാണ് TS-07-FE-8889 ആം നമ്പർ കാറിൽ നിന്നും 3.3 ലിറ്റർ മദ്യം കണ്ടെടുത്തിട്ടുള്ളത് എന്ന് വ്യക്തമാകുന്നു. കൂടാതെ പിടിച്ചെടുത്ത മദ്യം തെലുങ്കാന സംസ്ഥാനത്തു മാത്രം വിൽപനാവകാശമുള്ളതുമാണ്. ശബരിമലയും പരിസരപ്രദേശങ്ങളും അതീവ സുരക്ഷാ മേഖലയായി കേരള സർക്കാർ പ്രഖ്യാപിച്ചിട്ടുള്ളതുമാണ്. ടി വിജ്ഞാപനം സംബന്ധിച്ച് എല്ലാ ദക്ഷിണേന്ത്യൻ ഭാഷകളിലും, ഇംഗ്ലീഷിലും വ്യപക പ്രചാരണം നൽകിയിട്ടുള്ളതും ശബരിമലയിലേയ്ക്കുള്ള റോഡുവക്കുകളിൽ ആയത് സംബന്ധിച്ച് പ്രചാരണ ബോർഡുകൾ സ്ഥാപിച്ചിട്ടുള്ളതുമാണ്. ആയതിൽ നിന്നും മദ്യം കൈവശം വയ്ക്കുന്നത് നിരോധിത പ്രവർത്തിയാണെന്ന് അറിയാനുള്ള അവസരം ഉണ്ടായിരുന്നില്ലായെന്ന് പറയുന്നത് അംഗീകരിക്കാൻ സാധിക്കില്ല. ശബരിമല, പമ്പ, ചാലക്കയം, നിലയ്ക്കൽ മുതലായ സ്ഥലങ്ങളിൽ നിന്നും ഒരു തുള്ളി മദ്യം പിടിച്ചെടുത്താൽ പോലും അത് ശിക്ഷാർഹമാണ്. ടി കേസിൽ മദ്യനിരോധന മേഖലയിൽ വെച്ച് വാഹനത്തിൽ സൂക്ഷിച്ച് വെച്ച് കടത്തിക്കൊണ്ടുവന്ന 3.3 ലിറ്റർ മദ്യം പിടിച്ചെടുത്തുയെന്നമാത്രമല്ല, പിടിച്ചെടുത്ത മദ്യം തെലുങ്കാന സംസ്ഥാനത്തു മാത്രം വിൽപനാവകാശമുള്ളതുമാണ് മദ്യകുപ്പികളിൽ For sale in Telungana എന്ന് രേഖപ്പെടുത്തിയിട്ടുള്ളതിനാൽ വാഹനം ഓടിച്ചു വന്ന പ്രതിക്ക് ടി മദ്യം കേരളത്തിൽ കൊണ്ടുവരുന്നതിന് പാടില്ലായെന്ന് അറിയാമെന്നും വ്യക്തമാണ്. ആയതിൽ നിന്നും കേസിലെ പ്രതികൾ. U/s 55(a) & 58 അബ്കാരി ആക്ട് പ്രകാരമുള്ള കുറ്റകൃത്യം ചെയ്തതെന്ന് ബോധ്യമായിട്ടുള്ളതാണ്. ആയതിലേക്ക് ഹർജിക്കാരിക്കുവേണ്ടി ഹാജരായ അഭിഭാഷകൻ പറയുന്ന വാദഗതികൾ ഒന്നുംതന്നെ നിലനില്ക്കുന്നതല്ലായെന്നും കാണുന്നു.ഹർജിക്കാരിക്ക്

കേസുമായി യാതൊരു അറിവും ബന്ധവുമില്ലായെന്ന് പറയുന്നത് സത്യമായിരിക്കാം. എന്നാൽ വാഹനത്തിന്റെ തൽസമയ ചുമതലക്കാരന്റെ അറിവും സമ്മതത്തോടും കൂടി തന്നെയാണ് ടി വാഹനത്തിൽ തെളുക്കാന സംസ്ഥാനത്തുമാത്രം വിൽപനാവകാശമുള്ള മദ്യ കടത്തിക്കൊണ്ടുവന്നതെന്ന് കാണുന്നു.

9.തൽസമയം വാഹനത്തിലുണ്ടായിരുന്ന ഹർജിക്കാരിയുടെ ഭർത്താവും കേസ്സിലെ 4 ആം പ്രതിയുമായ നവാരു ശ്രീനിവാസ് റെഡ്ഡിയുടെ പൂർണ്ണ അറിവോടെ തന്നെയാണ് ടി വാഹനത്തിൽ തെളുക്കാന മദ്യ കയറ്റി മദ്യനിരോധന മേഖലയായ കൃത്യ സ്ഥലത്ത് വന്നതെന്ന് നിസംശയം തെളിയുന്നതിനാൽ അബകാരി കുറ്റകൃത്യത്തിന് ഉപയോഗിച്ച ഹർജിക്കാരിയുടെ വക ടി TS-07-FE-8889 ആം- നമ്പർ വാഹനം സർക്കാരിലേയ്ക്ക് കണ്ടുകെട്ടിയ പത്തനംതിട്ട ഡെപ്യൂട്ടി എക്സൈസ് കമ്മീഷണറുടെ നടപടി ഉചിതവും നീതിയുക്തവുമാണെന്ന് ഉത്തമബോധ്യം വന്നിട്ടുള്ളതാണ്.”

In the light of the extracted discussions, the concerned respondents cannot be found fault with for having arrived at the conclusion that offences under the Act have been committed by the accused in the case by means of the vehicle ordered to be confiscated. But, the extracted discussions do not show that the authorities have considered the question as to whether the case on hand is a case where the discretion conferred on the authorised officer to order confiscation of property under Section 67B (2) is to be invoked.

15. As noted, in terms of the orders impugned in the writ petitions, a Toyota Innova Crysta worth several lakhs of rupees has been confiscated, for the husband of the petitioner and a few of his friends having allegedly carried 3.3 litres of Indian made foreign liquor in the vehicle of the petitioner. The Indian Made Foreign Liquor allegedly carried in the vehicle is a commodity available for purchase in licensed shops in almost every State in the country including the State of Kerala. As far as

the State of Kerala is concerned, the only restriction concerning the possession of the same, in the absence of any notification under Section 9 of the Act is that it shall not exceed the permissible quantity. The quantity of Indian Made Foreign Liquor allegedly carried in the vehicle was well within the permissible limit. This fact is not disputed. The case happened to be registered under Sections 55(a) and 58 of the Act read with Rule 9 of the Rules, since the liquor allegedly carried in the vehicle was intended for sale in the State of Telangana and the accused were found with the liquor in a prohibited area in terms of a notification under Section 9 of the Act. As rightly contended by the learned counsel for the petitioner, possession of Indian Made Foreign Liquor intended for sale in another State will not by itself make out the offence punishable under Section 58 of the Act, unless it is shown that the possession of the liquor was with the knowledge that the same has been unlawfully imported. Likewise, merely for the reason that a person is found to be in possession of Indian Made Foreign Liquor intended for sale in another State, it cannot be concluded that he has brought the same into the State from a place outside the State. Of course, the question as to whether the accused in the case had the knowledge that the Indian Made Foreign Liquor allegedly carried

by them is unlawfully imported and the question as to whether the liquor is one brought by the accused from the State of Telangana, are matters of evidence. But, the fact remains that had the Indian made foreign liquor allegedly carried in the vehicle was one purchased from the State of Kerala and had the accused in the case were found just outside the jurisdiction of Chalakkayam Excise range, a case would not have been registered for the offences alleged. The pointed question, therefore, is as to whether the authorised officer was justified in ordering the confiscation of the vehicle invoking his power under Section 67B(2) of the Act in a case of this nature.

16. Kerala is not a State where sale and consumption of liquor is prohibited. Section 9 of the Act confers power on the State Government to prohibit transportation of liquor from any local area into another local area by notification. The power under Section 9 is being exercised by the State Government in and around religious places during festive seasons by notification prohibiting transportation of liquor to that area. One would not know normally about the notifications of this nature unless he/she belongs to the area concerned, though one is presumed in law to know about such notifications. It is seen that one of such notifications was issued by the State Government in

connection with Sabarimala pilgrimage for the period from 12.11.2017 to 20.01.2018. Obviously, the purpose of such a notification is maintenance of tranquillity in the area since large number of pilgrims from different States gather in that place during the relevant period. Even though it is alleged in the impugned orders that boards were exhibited in the area about the notification issued under Section 9, it is difficult to attribute knowledge about such notifications to persons coming from different States. Again, in so far as Indian Made Foreign Liquor is available in market in both the State of Telangana and the State of Kerala, it is difficult to attribute knowledge to people who are coming from outside the State that the liquor intended for sale in other States cannot be brought into the State of Kerala even for consumption, for the State Government has not received excise duty in respect of the same. That apart, the materials indicate that the liquor allegedly carried in the vehicle was found beneath the seat of the car and it was detected in the course of a routine inspection conducted by the Bomb Squad of the Police who were patrolling in the area. It is evident that having regard to the quantity, the liquor, if at all brought by the accused, must not have been for any commercial purpose. There were altogether five passengers in the vehicle and there is

nothing on record to indicate that who among the passengers possessed the liquor, for the quantity of the liquor is such that it could be carried by one person without the knowledge of others also. There is also nothing on record to show that the liquor was carried by the husband of the petitioner or that it was carried by another with the knowledge of the husband of the petitioner. In the aforesaid circumstances, according to us, it is a fit case where the authorised officer ought to have exercised discretion not to order confiscation of the vehicle worth several lakhs of rupees for the offences alleged to have been committed by means of the vehicle ordered to be confiscated in respect of 3.3 litres of Indian Made Foreign Liquor merely for the reason that it was intended for sale in another State and the vehicle happened to be in an area covered by a notification issued under Section 9 of the Act, though the allegation, if proved, would make out the offences alleged. Needless to say, Exts.P7 and P9 orders are liable to be interfered with.

In the result, while we hold that the view taken by the learned Single Judge that it is obligatory for the authorised officer exercising power under Section 67B(2) of the Act to issue notice to the person from whom the property sought to be confiscated has been seized before ordering confiscation of the

same even if he is not the owner of the property, is unsustainable in law, we allow the writ petition and quash Exts.P7 and P9 orders. The appellants are directed to release the vehicle to the petitioner forthwith.

sd/-

P . B . SURESH KUMAR
JUDGE

sd/-

C . S . SUDHA
JUDGE

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