

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2009
(Arising out of SLP (Crl. No. 4868 of 2007))

State of Kerala

..Appellant

C.A. Jabbar

..Respondent

Versus

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Kerala High Court. Respondent had filed an application for release of Maruti Omni Van of which he claimed to be the owner. Learned Judicial First Class Magistrate rejected the prayer for release in terms of

Section 457 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The vehicle was seized in terms of Section 55(a) of the Abkari Act. The appellant took the stand that the vehicle was stolen and the matter was reported to the police and on the same day the vehicle was detected by the police. A case was registered under Section 55(a) of the Act against four accused persons. The application for release was rejected on the ground that the vehicle has been entrusted to the Assistant Excise Commissioner for the purpose of confiscation. The respondent approached the Assistant Excise Commissioner and he was directed to furnish bank guarantee equal to the value of the vehicle as fixed by a Mechanical Engineer before the High Court. Appellant had questioned the order taking the stand that he was unable to raise the amount required for the bank guarantee and, therefore, the vehicle should be released without any condition. The High Court held that in view of the factual scenario the Assistant Excise Commissioner, Idukki was to release the vehicle to the respondent after ascertaining the ownership on executing a bond of Rs.50,000/- with two solvent sureties for the like sum.

3. Questioning correctness of the order passed, learned counsel for the appellant submitted that without availing the statutory remedy the

respondent should not have approached the High Court and in any event the High court should not have interfered.

4. Section 67-B of the Act reads as follows:

“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 recovering 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, produce the same before an officer authorized 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 authorized officer.)

(2) Where an authorized officer seizes and detains any property specified in sub-section (1) or where any such property is produced before an authorized 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 authorized 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 authorized officer may also order confiscation of all contents thereof.

(3) When making an order of confiscation under sub-section (2), the authorized 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.”

5. Section 67E of the Act deals with the appeal in respect of an order passed under Section 67B of the Act while Section 67F refers to the power

of revision in respect of an order under Section 67B and 67E and can be exercised on his own motion by the Commissioner. Admittedly, the statutory remedies have not been availed. The High Court ought not to have interfered in a matter when statutory remedies are provided. In the instant case it is submitted by the respondent that pursuant to the High Court's order dated 26th October, 2006 the vehicle has been released.

6. However, the direction for release or executing a bond seems to be without any justification when Assistant Excise Commissioner had directed furnishing of the bank guarantee equal to the value of the vehicle. The High Court had not indicated any reason as to why that part of the order was interfered with.

7. We dispose of the appeal with the direction that in addition to the personal bond executed for securing release of the vehicle, the respondent shall within a period of six weeks from today furnish bank guarantee for the sum of Rs.25,000/- to the satisfaction of the Assistant Excise Commissioner concerned. If the bank guarantee is not furnished, the concerned official shall be free to cancel the bond and to take possession of the vehicle in question.

8. The appeal is disposed of accordingly.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
May 01, 2009