

ORIGINAL JURISDICTION

Dr. Justice Kauser Edappagath

W.P.(Crl.) No.1631 of 2025

2025 November 25

Biju Ettammal . . . Petitioner

v.

State of Kerala and others . . . Respondents

The writ petition was preferred by the petitioner challenging the confiscation order passed u/s 67B(2) of the Abkari Act. Petitioner was the sole accused in the case, for the offence punishable under Section 55(a). The car that belongs to the petitioner involved in the crime was seized during the investigation. It was released on interim custody to him. Subsequently, the 4th respondent initiated confiscation proceedings under Section 67B of the Abkari Act. As per Ext.P1 order, the car was ordered to be confiscated, which was confirmed in appeal as per Ext.P3 order of the 3rd respondent. The petitioner was acquitted after a full fledged trial. Petitioner challenged the confiscation proceedings before High Court contending that in a proceeding u/s 67B of the Abkari Act, it is obligatory on the part of 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 in this case, such a satisfaction has not been arrived at. It was further contended that in view of the acquittal of the petitioner, the confiscation order is liable to be set aside. Allowing the petition, the Court;

Issue for Consideration

Whether confiscation of vehicle under Section 67B of the Abkari Act, can be sustained when the petitioner is acquitted in the original criminal prosecution?

Abkari Act, 1077 (Kerala Act 1 of 1077)—Section 67B—The confiscation of the vehicle under Section 67B cannot be sustained when the petitioner is acquitted in the original prosecution—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 since 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.

Held:

Sections 65 and 67B of the Abkari Act deals with the confiscation of the property in respect of or by means of which an offence punishable under the Abkari Act has been committed. A reading of Sections 65 and 67B would show that it does not empower the authorised officer to confiscate the property in all cases where an offence is committed in respect of or by means of the property. Before ordering the

confiscation of property, the authorised officer must be satisfied that an offence under the Act has been committed in respect of or by means of that property and that the said property is liable for confiscation. 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 since 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. The authorised officer, by applying an objective test, must conclude that the property is liable for confiscation. There is nothing in Exts.P1, P3 and P6 orders to show that the authorised officer had applied an objective test. A reading of Ext.P4 judgment would show that the prosecution failed to prove that the petitioner transported IMFL in the car. That apart, what was involved was only 12 bottles of IMFL having a capacity of 750 ml each. These facts suggest that the authorised officer failed to satisfy himself that an offence under the Act had been committed. Hence, the confiscation of the vehicle under Section 67B of the Abkari Act cannot be sustained when the petitioner is acquitted in the original criminal prosecution. Therefore, the impugned orders cannot be sustained, and they are set aside. The respondent No. 3 is directed to refund the amount deposited at the time of the interim release of the vehicle to the petitioner. (*Paragraphs 8 and 9*)

Case Law Cited:

- (1) 2022 (1) K.H.C. 563—*Referred to.*
- (2) 2022 K.H.C. Online 6250—*Relied upon.*

List of Acts:

Abkari Act, 1077.

List of Keywords:

Confiscation, Vehicle, Satisfaction, Competent authority.

Case Arising From:

Writ petition filed under Article-226 of Constitution of India.

Appearance of Parties:

Sri. A. Arun Kumar, Sri. S. Shyam Kumar, Sri. Sachin George Aramban and Sri. Vishnu Sreedharan K. . . . for petitioner

Sri. Sangeetharaj N.R. (PP) . . . for respondents

JUDGMENT

This writ petition has been filed challenging the confiscation order passed u/s 67B(2) of the Kerala Abkari Act.

2. The petitioner was the sole accused in SC No.415/2020 on the files of the Assistant Sessions Court, Kasaragod (for short, the trial court). He faced trial for the offence punishable under Section 55(a) of the Kerala Abkari Act.

3. The prosecution case, in short, was that on 11.10.2019 at 11.50 p.m., the petitioner was found transporting 12 bottles of Indian Made Foreign Liquor, each having a capacity of 750 ml, in his Innova car bearing Regn.No.KL-13 S 1772 in contravention of the Abkari Act.

4. After a full-fledged trial, the petitioner was acquitted as per Ext.P4 judgment.

5. The car that belongs to the petitioner involved in the crime was seized during the investigation. It was released on interim custody to him. Subsequently, the 4th respondent initiated confiscation proceedings under Section 67B of the Abkari Act. As per Ext.P1 order, the car was ordered to be confiscated, which was confirmed in appeal as per Ext.P3 order of the 3rd respondent. The petitioner challenged Exts.P1 and P3 before this court in WP(Crl) No.314/2022. It was disposed of as per Ext.P5 judgment directing the 2nd respondent to reconsider the matter in the light of Ext.P4 judgment of acquittal. The 2nd respondent thereafter passed Ext.P6 order confirming Ext.P3 order. This writ petition has been filed to quash Exts.P1, P3 and P6.

6. I have heard Sri.Arun Kumar A., the learned counsel for the petitioner and Sri.Sangeetha Raj N.R, the learned Public Prosecutor.

7. The learned counsel for the petitioner submitted that in a proceeding u/s 67B of the Abkari Act, it is obligatory on the part of 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 in this case, such a satisfaction has not been arrived at. The learned counsel further submitted that in view of the acquittal of the petitioner, the confiscation order is liable to be set aside. The learned Public Prosecutor, on the other hand, submitted that the power conferred on the authorised officer to order confiscation of property is irrespective of the launching of prosecution for the commission of the offence alleged. The learned Prosecutor further submitted that the authorised officer cannot be found fault with for having ordered the confiscation of the vehicle on the facts disclosed in the case.

8. Sections 65 and 67B of the Abkari Act deals with the confiscation of the property in respect of or by means of which an offence punishable under the Abkari Act has been committed. A reading of Sections 65 and 67B would show that it does not empower the authorised officer to confiscate the property in all cases where an offence is committed in respect of or by means of the property. Before ordering the confiscation of property, the authorised officer must be satisfied that an offence under the Act has been committed in respect of or by means of that property and that the said property is liable for confiscation. 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 since 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. The authorised officer, by applying an objective test, must conclude that the property is liable for confiscation (See **State of Kerala and**

Others v. Navaru Swapna Reddy, 2022 (1) K.H.C. 563). There is nothing in Exts.P1, P3 and P6 orders to show that the authorised officer had applied an objective test. A reading of Ext.P4 judgment would show that the prosecution failed to prove that the petitioner transported IMFL in the car. That apart, what was involved was only 12 bottles of IMFL having a capacity of 750 ml each. These facts suggest that the authorised officer failed to satisfy himself that an offence under the Act had been committed.

9. The Supreme Court of India in **Abdul Vahab v. State of Madhya Pradesh** (2022 K.H.C. OnLine 6250), while dealing with confiscation of a vehicle under the provisions of Madhya Pradesh Prohibition of Cow Slaughter Act, 2004 has held that the confiscation of the vehicle used for the commission of the offence when he is acquitted in the criminal prosecution amounts to arbitrary deprivation of his property and violates the right guaranteed under Art.300A of the Constitution of India. The dictum laid therein could be applied to the confiscation under Section 67B of the Abkari Act as well. Hence, the confiscation of the vehicle under Section 67B of the Abkari Act cannot be sustained when the petitioner is acquitted in the original criminal prosecution. Therefore, the impugned orders cannot be sustained, and they are set aside. The respondent No. 3 is directed to refund the amount deposited at the time of the interim release of the vehicle to the petitioner.

The writ petition is allowed as above.

Result of the Case

Allowed.

Headnote prepared by A.R.
