

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN

TUESDAY, THE 31ST DAY OF JANUARY 2012/11TH MAGHA,1933

RP.No. 63 of 2012 ()

AGAINST THE ORDER/JUDGEMENT IN WPC.31915/2011 DATED 2.12.2011

REVIEW PETITIONER/4TH RESPONDENT:

THE DEPUTY EXCISE COMMISSIONER,
CIVIL STATION, VIDYANAGAR P.O., KASARAGOD
PIN-671001.

BY PUBLIC PROSECUTOR SRI.SREEJITH V.S

RESPONDENT/PETITIONER:

HARSH.A
S/O.KONGARAPPA, 9/26 OF MLIYAR G P, P.O.MULIYAR
KASARAGOD-671542.

BY ADV.SRI.I.V.PRAMOD

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 31-01-
2012, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

MJL

N.K.BALAKRISHNAN, J.

**R.P.No.63 of 2012 in
W.P.(C) No.31915 of 2011**

Dated this the 31st day of January, 2012

Order

The State has filed this petition to review the judgment of this court dated 2.12.2011. As per that judgment the autorickshaw involved in that case was ordered to be released to the petitioner therein on his executing a bond for Rs.50,000/- with two solvent sureties each for the like amount. He was also directed not to transfer possession of the autorickshaw without getting permission from the jurisdictional Magistrate. There was a further condition that he shall produce the autorickshaw before the learned Magistrate or the authorised officer as and when directed.

2. The learned Public Prosecutor would submit that the aforesaid order is liable to be reviewed. The decision of this court in **Shankaran v. Addl. Excise Commissioner** (2010(3) KLT 63) has been relied upon. That was a case where the proceedings initiated for confiscation of a vehicle was challenged before this

court. But in that case it was specifically found that the petitioner therein was the owner of the vehicle. That the contraband liquor was transported and seized from the vehicle when his son was driving the same was not at all disputed. That apart, the authorities could find that it was with the knowledge and consent of the petitioner therein, namely, the owner of the vehicle that the transportation was done. The facts of that case are entirely different. Here the IMFL was seized from the possession of a passenger who had boarded the autorickshaw as a passenger. The order of release was not unconditional. Sufficient safeguard was made in the order itself. It is also important to note that in the judgment sought to be reviewed, it was mentioned that the total quantity of IMFL was 5.76 litres. The specific case was that a passenger boarded the autorickshaw carrying a big shopper and that big shopper contained IMFL bottles. It is not possible for an autorickshaw driver to verify the bag or baggages of each passenger when he/she enters the autorickshaw. There may be cases where the driver of the vehicle and the passenger conjointly transporting liquor in which case the position may be different. But in this case, as per records, it appears that the

petitioner allowed a passenger to board the autorickshaw and the big shopper carried by that passenger contained a total quantity of 5.76 litres of IMFL. Want of knowledge which was likely to be raised by the defence was one of the reasons projected by the learned counsel for the accused - owner of the auto - to get temporary release of the autorickshaw. It is not known why the petitioner herein (the Excise Department) thinks that the order runs counter to the interest of the State/Excise Department. The impugned judgment was passed based on the facts disclosed in that case. Each case has to be decided based on the facts of that case. The fact that there is provision for confiscation is no reason to say that under no circumstances vehicle or property involved in the offence should not be released. That will depend upon the facts of each case. It is clarified that the judgment sought to be reviewed was passed based on the facts of that case alone. It is not laid down as a precedent that in all cases where vehicles are seized in connection with an abkari offence, the vehicles are to be released to the parties claiming it. In paragraph 4 of the judgment it was also mentioned that if the accused therein (the petitioner in the writ petition) files an application for composition,

that also will be duly considered by the 4th respondent therein. I find no reason to review that part of the judgment. I also find no reason to review the judgment dated 2.12.2011. The Review Petition is dismissed subject to the observations made above.

N.K.BALAKRISHNAN, JUDGE.

srd

