

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 15TH DAY OF JULY 2016/24TH ASHADHA, 1938

Cr1.MC.No. 4230 of 2016 ()

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CRMP 4014/2016 of JUDICIAL FIRST CLASS MAGISTRATE COURT,  
ALATHUR  
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PETITIONER(S) /PETITIONER:  
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M.V. BAIJU, AGED 44 YEARS,  
S/O VELAPPAN, MUTHUPARAMBIL HOUSE,  
MADAYIKONAM P.O., MAPRANAM, THRISSUR.

BY ADV. SRI.NIREESH MATHEW

RESPONDENT/RESPONDENT(S)/COMPLAINANT:  
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STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD  
ON 15-07-2016, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:

bp

Cr1.MC.No. 4230 of 2016 ()

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APPENDIX

PETITIONER(S) ' EXHIBITS

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ANNEXURE A:           PHOTOCOPY OF THE PETITION, CRL.M.PNO.4014/2016,  
WITHOUT ANNEXURES, FILED BEFORE THE JUDL.  
FIRST CLASS MAGISTRATE COURT, ALATHUR.

ANNEXURE B:           CERTIFIED COPY OF THE ORDER DATED 15.6.2016 IN  
CRL.MP.NO.4014/2016 PASSED BY THE JUDL. FIRST  
CLASS MAGISTRATE COURT, ALATHUR.

ANNEXURE C:           PHOTOCOPY OF THE ORDER DATED 10.11.2014 IN  
CRL.MC NO.6294/2014 PASSED BY THIS HON'BLE  
COURT.

RESPONDENT(S) ' EXHIBITS                               :       NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

**RAJA VIJAYARAGHAVAN, V., J.**

**CrI.M.C. No. 4230 of 2016**

Dated this the 15<sup>th</sup> day of July, 2016

**O R D E R**

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1. On 27.4.2016, the vehicle owned by the petitioner bearing Reg.No.KL-45/L-1104 was intercepted while transporting toddy. On inspection, the total quantity of toddy in the vehicle was found to be less than the quantity of toddy noted at the Alathur Check Post. Crime No.50 of 2016 was promptly registered by the Excise Inspector, Alathur under Sections 56(b) and 67B of the Abkari Act.
2. The seizure of the vehicle was reported before the learned Magistrate.
3. Annexure-A application was filed by the petitioner under Section 457 of Cr.P.C. seeking interim release of the vehicle, which was allowed by Annexure-B order subject to conditions. The petitioner is aggrieved by condition No.

(i) which is extracted below for easy reference.

(i) On depositing Rs.5,20,000/- (Rupees five lakhs twenty thousand only) ie, the value fixed by the Assistant Executive Engineer, PWD Mechanical Sub Division, Kozhikode.

4.The learned counsel appearing for the petitioner referring to an order of this Court in Crl.M.C.No.6294 of 2014 dated 10.11.2014 contends that the offence alleged against the petitioner is compoundable under the law and involves only violation of certain license conditions. This Court went on to hold that in cases where crime is registered under Section 56(b) of the Abkari Act, the imposition of condition directing the petitioner to deposit the value of the vehicle is irrational. It is submitted by the learned counsel that the petitioner is the registered owner of the vehicle seized and he had only provided the vehicle to the licensee for the transportation of toddy. According to the learned counsel, Section 56(b) of the Abkari Act is

bailable as well as compoundable and Section 67B is not a penal provision.

5.As per the occurrence report the allegation is primarily under Section 56(b) which reads as follows:

**"56. For misconduct by licensee, etc:-**

XXXX XXXX XXXX XXXXXX

(b) Wilfully does or omits to do anything in breach of any of the conditions of his license or permit not otherwise provided for in this Act;

xxx xxx xxxx xxxx

Shall, on conviction before a Magistrate, be punished for each such offence, with imprisonment for a term which may extend to six months, or with fine which may extend to twenty five thousand rupees, or with both."

6.Section 67A confers the power to compound the offence.

As per the table attached to Section 67A for misconduct by a licensee, the compounding fee is Rs.25,000/-.

7.The essence of the submission of the learned counsel is that when the offence alleged against the petitioner is

compoundable by paying a sum of Rs.25,000/- there was no justification on the part of the learned Magistrate to direct the petitioner to deposit a sum of Rs.5,20,000/- being the value of the vehicle.

8.I find merit in the submission of the learned counsel.

Though Section 53B mandates that temporary release of the vehicle or conveyance should be accompanied with the directions to execute sufficient bond by way of cash security equivalent to the market value of such vehicle or conveyance, this Court in **Abdul Nazar v. State of Kerala** 2014 (2)KLT 1073] has held that in appropriate cases the said condition can be dispensed with by imposing such conditions pending proceedings under Section 67C of the Abkari Act. I am also persuaded by Annexure C order of this Court wherein this Court had held that when the offence is compoundable imposition of onerous conditions is irrational.

9. Having regard to the facts and circumstances, I am inclined to allow this petition and the condition imposed by the court below directing the petitioner to deposit the value of the vehicle shall stand set aside.

10. The petitioner is directed to execute a bond for Rs.5,20,000/- with two solvent sureties for the like sum to the satisfaction of the Judicial First Class Magistrate, Alathoor. All other conditions shall remain as such.

Petition is disposed off.

Sd/-

**RAJA VIJAYARAGHAVAN, V.  
JUDGE**

Ps/16/7/16