

Kerala High Court

O.K.Balan vs Sub Inspector Of Police on 1 March, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.MC.No. 820 of 2009()

1. O.K.BALAN, S/O.CHEKKUTTY, CHEROTH HOUSE,  
... Petitioner

Vs

1. SUB INSPECTOR OF POLICE, BALUSSERY  
... Respondent

2. THE TALUK SUPPLY OFFICER, KOZHICODE.

3. STATE REP; BY P.PROSECUTOR, HIGH COURT OF

For Petitioner : SRI.T.G.RAJENDRAN

For Respondent : PUBLIC PROSECUTOR

The Hon'ble MR. Justice M.SASIDHARAN NAMBIAR

Dated : 01/03/2010

O R D E R

M.SASIDHARAN NAMBIAR, J.

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CRL.M.C.NO.820 OF 2009  
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Dated 1st March 2010

O R D E R

Petitioner is the first accused in Crime 547/2008 of Balussery Police Station registered for the offences punishable under section 16 of Kerala Kerosene Control Order read with section 3 and 7 (1)(a) of Essential Commodities Act. Petitioner is the authorised retail distributor of ration shop No.214 of Koilandy Taluk. On the night of 4.9.2008 at about 11 p.m, the public restrained the second accused, while he was carrying a 30 litre can containing kerosene which is to be supplied from the

ration shop, on the allegation that it is being shifted for sale in the black market. On getting information over phone, Taluk Supply Officer directed the Rationing Inspector to proceed to the spot. He went there and seized the can containing 30 litres of kerosene and prepared sample of kerosene and crime No.547/2008 of Balussery police station was registered under Sections 3 and 7(1)(a)(ii) of Essential Commodities Act. Petition is filed under Section 482 of Code of Criminal Procedure to quash the proceedings contending that Taluk Supply Officer has not taken any sample from the barrel which contains kerosene in the presence of the petitioner and though proceedings were initiated to cancel the license by Annexure-II order dated 28/2/2009, that proceedings was dropped on realisation of Rs.11,220/-, being the value of the kerosene and rice found in shortage and in such circumstances, continuation of the proceedings is only an abuse of process of the court.

2. Learned counsel appearing for the petitioner and learned Public Prosecutor were heard.

3. Argument of the learned counsel appearing for the petitioner is that kerosene seized by the Rationing Inspector was not being transported for sale in the black market as alleged and instead as there was leak in the barrel, it was being shifted to the can and therefore, the offence is not attracted. Learned Public Prosecutor made available case diary which reveals that general public finding that second accused is removing a 30 litres can containing kerosene stopped him, as purpose of transport was to sell the same in black market. In such circumstances, question whether kerosene from the barrel was shifted to the can due to leakage as canvassed by the petitioner or was removed out of the ration shop at 11 p.m for the purpose of sale in the black market cannot be decided in this petition filed under Section 482 of Code of Criminal Procedure. As the matter is for investigation, this is also an aspect which is to be considered by the investigation officer. I find no reason to quash the proceedings as claimed by the petitioner based on Annexure-II order of the Taluk Supply Officer. By Annexure-II order Taluk Supply Officer has realised penalty from the security deposit made by the petitioner, being value of kerosene and rice found in shortage, on verification on the very next day. In such circumstances, based on Annexure-II order also case cannot be quashed. Petitioner is at liberty to challenge the final order, if it goes against him.

4. Learned counsel then submitted that there may be direction to the Magistrate to release the petitioner on his surrender on the same day. When an accused surrenders and files an application for bail, Magistrate is expected to pass orders in the application without delay. I find no reason to believe that Magistrate is unaware of the provisions of law or the decisions of the court or that the Magistrate will not act in accordance with law. Hence no direction is warranted.

Petition is disposed.

M.SASIDHARAN NAMBIAR, JUDGE.

uj.