

Abdul Haneefa vs State Of Kerala on 4 October, 2024

Author: Bechu Kurian Thomas

Bench: Bechu Kurian Thomas

2024:KER:74083

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 4TH DAY OF OCTOBER 2024 / 12TH ASWINA, 1946

WP(CRL.) NO. 1048 OF 2024

IN ST NO.3020 OF 2014 OF JUDICIAL MAGISTRATE OF FIRST

CLASS ,SULTHANBATHERY

PETITIONER:

ABDUL HANEEFA
AGED 39 YEARS
S/O ABDUL REHIMAN, PULATHARAKKAL (H),
KADAMPAZHIPPURAM P.O,
PALAKKAD DISTRICT, PIN - 678 633.

BY ADVS.
K.ANAND
AMEER SALIM
AFSANA KHAN
POOJA DILIP
NANDHANA T.B.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.
- 2 COMMISSIONER OF FOOD AND SAFETY

OFFICE OF THE COMMISSIONER OF FOOD SAFETY,
BHAKSHYASURAKSHA BHAVAN,
THYCAUD P O, THIRUVANANTHAPURAM,
PIN - 695 014.

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3 FOOD SAFETY OFFICER
OFFICE OF THE FOOD SAFETY OFFICER,
SULTHANBATHERY CIRCLE,
MINI CIVIL STATION, SULTHANBETHERY,
WAYANAD DISTRICT, PIN - 673 592.

BY ADVS.

ADVOCATE GENERAL OFFICE KERALA
ADDL.DIRECTOR GENERAL OF PROSECUTION(AG-11)
SMT. SREEJA V (PP)
SRI.GRASHIOUS KURIAKOSE (Sr.)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 04.10.2024, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:
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BECHU KURIAN THOMAS, J.

W.P(Crl.) No.1048 of 2024

Dated this 4th day of October, 2024

JUDGMENT

Petitioner challenges Ext.P2 order and also seeks to quash Ext.P1 complaint in S.T.No.3020/2014 on the files of the Judicial First Class Magistrate Court-I, Sulthanbathery.

2. According to the complaint, on 04.10.2013, the accused was found to be transporting prohibited tobacco items through the check post for sale in Kerala. On inspection, 24 sealed plastic bags of "Hans, Chaap tobacco" each containing 50 x 270 grams which were prohibited items were found and accused allegedly committed offences under Sections 3(l)(zz)

(v), 26(1)(2)(i)(iii)(v), 27(1)(2)(c)(e), 58, 59(ii) and Section 63 of the Food Safety and Standards Act, 2006 (for short FSS Act) read with Regulations 2, 3, 4 of Food Safety and Standards (Prohibition and Restriction on Sale) Regulation, 2011.

3. The primary contention urged by the petitioner is that, Ext.P2 notification is issued without authority or 2024:KER:74083 jurisdiction and further that the alleged articles recovered from the petitioner would not fall within the definition of food.

4. I have heard Sri. K.Anand, the learned counsel for the petitioner as well as Sri. Grashious Kuriakose learned Additional Director General prosecution assisted by Sri. C.K Suresh learned Public Prosecutor on behalf of the respondents.

5. Ext.P2 is an order dated 22.05.2012 issued by the Commissioner of Food Safety, prohibiting articles of food in which tobacco and nicotine are used as ingredients stating that they are injurious to health. Though the petitioner contended that, such a notification could not have been issued by the Commissioner of Food Safety under Section 92 of the FSS Act. I am of the view that, the said contention is totally misplaced. Ext.P2 order is not issued under Section 92, but is issued in exercise of the powers under Section 30 of FSS Act. This is evident from the penultimate paragraph of the order, wherein, it is specifically mentioned that the Commissioner of Food Safety is empowered under Section 30(2)(a) of the FSS Act to prohibit in the interests of public. Since power is conferred upon the Commissioner of Food Safety to prohibit, in the interest of public health under Section 30(2)(a) of the FSS Act, 2024:KER:74083 the impugned Ext.P2 cannot be said to be without authority.

6. Apart from the above, the learned Additional Director General prosecution brought to the notice of this Court an order of the Division Bench dated 03.10.2012 in Writ Appeal No.1685/2012, wherein, it was clarified that the circular produced as Ext.P2 herein prohibits production, distribution and sale of gutkha and panmasala containing tobacco or nicotine as ingredients by whatsoever name they are available in the market in the State of Kerala.

7. Having regard to the above circumstances, I am satisfied that the contentions raised against the jurisdiction of the Commissioner of Food Safety to issue Ext.P2 order is legally not tenable and is hence rejected.

8. As regards the challenge against the complaint in S.T.No.3020/2014 on the files of Judicial First Class Magistrate Court-I, Sulthanbathery is concerned, the counsel for the petitioner had fairly conceded that the matter is listed for trial to 30.10 2024. The case is of the year 2014. Since the trial is about to commence, this petition challenging the aforesaid proceedings on the eve of commencement of trial cannot be entertained as the petitioner will have all remedies available 2024:KER:74083 under law during the trial. Moreover, the uncontroverted allegations in the complaint do make out, prima facie, the offences alleged and therefore this is not a fit case to exercise the inherent jurisdiction under Article 226 of the Constitution of India.

Accordingly, I find no merit in this Writ Petition and it is dismissed.

Sd/-

BECHU KURIAN THOMAS JUDGE SCB 2024:KER:74083 APPENDIX OF WP(CRL.) 1048/2024
PETITIONER EXHIBITS EXHIBIT P1 AN ACCUSED COPY OF THE COMPLAINT UNDER
SECTION 42(5) OF FSS ACT, 2006 IN S.T. NO. 3020/2014 ON THE FILE OF JFCM-1 OF
SULTHAN BATHERY DATED 04.08.2014 WITH LIST OF DOCUMENTS.

EXHIBIT P2 A TRUE COPY OF THE NOTIFICATION NO.

A/1327/2012CFS DATED 22.05.2012 ISSUED BY THE 2ND RESPONDENT.