



2024:KER:88252

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 21ST DAY OF NOVEMBER 2024 / 30TH KARTHIKA, 1946

CRL.MC NO. 3301 OF 2019

CRIME NO.1510/2014 OF MANNUTHY POLICE STATION, THRISSUR

AGAINST THE ORDER DATED IN CC NO.2265 OF 2015 OF

JUDICIAL MAGISTRATE OF FIRST CLASS -III, THRISSUR

PETITIONER/ACCUSED:

K.S.SAJAN
AGED 59 YEARS
S/O. KRISHNAN NAIR, CHAITRAM HOUSE, MUTTEKKADU
DESOM, VENGALLUR, VIZHINJAM, THIRUVANANTHAPURAM
DISTRICT.

BY ADVS.
S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENTS/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.(CRIME NO.1510/2014 OF
MANNUTHY POLICE STATION, THRISSUR DISTRICT).



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OTHER PRESENT:

SRI.RENJITH.T.R, SR.PP

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 21.11.2024, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**



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P.V. KUNHIKRISHNAN, J.

CrL.M.C.No.3301 of 2019

Dated this the 21st day of November, 2024

ORDER

The petitioner is the 4th accused in CC No.2265/2015 on the files of Judicial First Class Magistrate Court-III, Thrissur, arising from Crime No.1510/2014 of Mannuthy Police Station. It is a prosecution initiated against the petitioner and others alleging offence punishable under Section 7(i)(a)(ii)(c) of Essential Commodities Act and Section 16 of Kerala Kerosene Control Order, 1968. The case is suo muto registered by the Police. It is alleged that while the police party were doing their patrol duty, they saw a tanker lorry filled with kerosene was being taken to a paint company situated at Kozhukully. According to the prosecution, kerosene was taken to the compound of Trust



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Industries and the vehicle was restrained and found that the lorry brought kerosene from civil supplies corporation to the company without any authority and the accused was arrested and the articles were seized and the crime was registered. Originally, two accused were arraigned as accused. But later, during investigation the petitioner who is the licensee of the Kerosene depot which is situated at Vizhinjam by name Chaitram fuels was also implicated. Annexure-I is the FIR and Annexure-II is the final report. According to the petitioner, even if the entire allegations are accepted, no offence is made out against the petitioner who is the 4th accused. Hence, this CrI.M.C.

2. Heard the counsel for the petitioner and the Public Prosecutor.

3. The counsel for the petitioner submitted that, he is the licensee (KWD.17-NTA, KWD.19-NTA, KWD.22-NTA, KWD.35/NTA)of Chaitram



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fuels. The licensee of the said dealer died on 13.08.2012 and in such circumstances, the license issued in the above depot were cancelled and for the distribution of kerosene to the retail dealers and fishing boats, it was attached to the wholesale depot run by the petitioner. Annexure-III is the letter issued from the Taluk Supply Officer, is the submission. It is submitted that the petitioner has no overall control over the distribution. The petitioner also informed the difficulty for the distribution of kerosene attached to other depot which was informed to the Taluk Supply Officer and as per letter dated 12.08.2013, the charge of the wholesale depot was detached from the petitioner's license and handed over to another licensee by name G.Krishnan and sons. Annexure-IV is the letter dated 12.08.2013. Petitioner further submitted that the details regarding supply of kerosene from civil supplies corporation was submitted by the Taluk



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Supply Officer to the District Supply Office as evident by Annexure-V. It is further submitted that on enquiry, it was found that the kerosene which was seized by the police on 13.09.2014 is the kerosene supplied to Kattakada wholesale depot and not to the petitioner. It is further submitted that the petitioner was implicated in the crime without any basis. It is also submitted that the appeal submitted by the petitioner with respect to the suspension of license was considered by the Government of Kerala and as per proceedings dated 05.10.2017 and exonerated the petitioner, considering that the petitioner has no active involvement in diversion of the kerosene to another component. Annexure-VI is the Government Order. It is submitted that a perusal of Annexure-VI would show that the petitioner has no active involvement in the case. In such circumstances, the continuation of prosecution against the petitioner is an abuse of



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process of court is the submission. It is submitted that the definite finding in the enquiry is that the civil supplies corporation released 12,000 litres of kerosene to Kattakada wholesale depot and the petitioner in the capacity as licensee has an overall management of the depot and the staff and relatives of deceased Krishnankutty, who is the original licensee holder of Kattakada depot were dealing with the affairs of Kattakada depot. Hence, it is submitted that the petitioner is not liable to be prosecuted. The Public Prosecutor submitted that the contention raised by the petitioner is to be raised before the trial court at the appropriate stage.

4. This Court considered the contention of the petitioner and the Public Prosecutor. The main contention of the petitioner is that, in the light of Annexure-VI, the continuation of



proceedings against the petitioner is an abuse of process of court. The relevant portion of the Annexure-VI is extracted hereunder:

" സർക്കാർ അപ്പീൽ വാദിയുടെ വാദങ്ങളും ബന്ധപ്പെട്ട റിക്കാർഡുകളും പരിശോധിച്ചു, നിലവിലുള്ള നിയമങ്ങൾ പ്രകാരം ഡിപ്പോ ശരിയായ രീതിയിൽ പ്രവർത്തിപ്പിക്കേണ്ടത് ഏജൻസിയുടെ കടമയാണ്. അതു കൊണ്ടു തന്നെ ഡിപ്പോയിലെ ജീവനക്കാരുടെ ഭാഗത്ത് നിന്നുണ്ടായ വീഴ്ച ലൈസൻസിയുടെ വീഴ്ചയായി തന്നെ കണക്കാക്കാം. എങ്കിലും ശ്രീ.കൃഷ്ണൻകുട്ടിയുടെ മരണത്തിനു ശേഷം ലൈസൻസിയെ അധികമായി ഏൽപ്പിച്ച ഡിപ്പോകളിൽ ശ്രീ.കൃഷ്ണൻകുട്ടിയുടെ തന്നെ അവകാശികളും സ്റ്റാഫുകളും മുഖേനയാണ് ഡിപ്പോ നടത്തുന്നത് എന്നും ചൈത്രം ഫ്യൂവൽസിൽ ഇരുന്ന് ഒരു വിദൂര മേൽനോട്ടം മാത്രമേ വഹിക്കുവാൻ കഴിയുള്ളൂ എന്ന സാഹചര്യത്തിൽ സർക്കാർ തന്നിൽ ഏൽപ്പിച്ച ഉത്തരവാദിത്വം ഡിപ്പോയിലെ സ്റ്റാഫുകളെ വിശ്വാസത്തിലെടുത്ത് നടത്തി വന്നിരുന്ന



സാഹചര്യത്തിൽ താൻ അറിയാതെ അതേ സ്റ്റാഫുകൾ തന്നെ നടത്തിയ ക്രമക്കേടിന്റെ ഫലമായി തന്നിട്ടുണ്ടായിരുന്ന ഏജൻസി നഷ്ടപ്പെടുകയും ജീവിത മാർഗ്ഗം തന്നെ ഇല്ലാതാവുകയും ചെയ്തു എന്ന അപ്പീൽ വാദിയുടെ വാദമുഖങ്ങളും തന്റെ സ്വന്തം ഡിപ്പോ ആയ ചൈത്രം ഫ്യൂവൽസ് യാതൊരു പരാതിക്കും ഇടവരാതെ നടത്തിക്കൊണ്ട് വന്നിരുന്നു എന്ന കാര്യവും മാനുഷിക പരിഗണന അർഹിക്കുന്നതായി കാണുന്നു.

പ്രസ്തുത സാഹചര്യങ്ങളുടെ അടിസ്ഥാനത്തിൽ മാനുഷിക പരിഗണന കണക്കിലെടുത്ത് കെ.ഡബ്ല്യൂ.ഡി 01/05-06, ചൈത്രം ഫ്യൂവൽസിന്റെ ലൈസൻസ് റദ്ദാക്കിക്കൊണ്ടുള്ള ജില്ലാ കളക്ടറുടെ പരാമർശം (2) ലെ നടപടിക്രമവും അപ്പീൽ നിരസിച്ചു കൊണ്ടുള്ള സിവിൽ സപ്ലൈസ് കമ്മീഷണറുടെ പരാമർശം (3) ലെ നടപടിക്രമവും റദ്ദാക്കുകയും ചൈത്രം ഫ്യൂവൽസിന്റെ ലൈസൻസ് പുനഃസ്ഥാപിക്കുകയും ചെയ്തു കൊണ്ട് ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു. മേലിൽ തന്റെ ഉത്തരവാദിത്വത്തിലുള്ള ഒരു ഡിപ്പോയിലും ഇത്തരത്തിലുള്ള ക്രമക്കേടുകൾ ഉണ്ടാകാതെ



നോക്കണമെന്ന് ലൈസൻസിക്ക് കർശന നിർദ്ദേശം നൽകുകയും ക്രമക്കേടുകൾ ഉണ്ടാകുന്ന പക്ഷം നിയമം അനുശാസിക്കുന്ന നടപടിക്രമങ്ങൾ സ്വീകരിക്കുകയും ചെയ്യുന്നതാണ് എന്നും ഉത്തരവാകുന്നു."

5. From the above, it is clear that the Government found that the petitioner has no direct control and the incident happened because of the action from the staff. In other words, the prosecution is now attributing vicarious liability to the petitioner. The vicarious liability is unknown in criminal law. This Court in **Ashok Kumaran @ Sabu C. v. State of Kerala [2023 (4) KHC 545]**, considered this point in detail.

" 16. The neat principles derived from the jurisprudence established by the Honorable Supreme Court in the aforementioned judgments are as follows.

a. It is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the



statute specifically provides so.

b. A corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy.

c. If the individuals controlling a company, often referred to as the company's "alter ego", commit a crime with intent, their actions and ensuing legal repercussions can be attributed to the corporation itself. In other words, the company can be held accountable for the criminal conduct of its leadership.

d. An individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent.



e. The individual who happens to be the director of a Company can be implicated in those cases where the statutory regime itself attracts the doctrine of vicarious liability by specifically incorporating such a provision. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.

f. In scenarios where jurisdiction is exercised based on a complaint filed under S.156(3) or S.200 of the Code of Criminal Procedure, the Magistrate has to pose unto himself the question as to whether the complaint, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the directors were personally liable for any offense.

g. In case the Magistrate chooses to issue summons to the Directors, it is obligatory to record his satisfaction about the prima facie case against the accused and the role played by



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them in the capacity of Managing Director, Company Secretary, or Directors. The same is a sine qua non for initiating criminal action against them."

6. In the light of the above dictum, this Court perused the finding in Annexure-VI order and also in the final report. I am of the considered opinion that the continuation of the prosecution against the petitioner alone can be quashed in the light of the above. But I make it clear that, this order is not applicable to the other accused and the case against the other accused will be considered by the trial court in accordance with law untrammelled by any observation in this order.

Therefore, this CrI.M.C is allowed. All further proceedings against the petitioner alone in CC No.2265/2015 on the files of Judicial First Class Magistrate Court-III, Thrissur, arising from Crime No.1510/2014 of Mannuthy Police Station, are



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quashed.

**Sd/ -
P.V.KUNHIKRISHNAN
JUDGE**

SSG



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APPENDIX OF CRL.MC 3301/2019

PETITIONER'S ANNEXURES

- ANNEXURE I** COPY OF FIR IN CRIME NO.1510/2014 OF MANNUTHY POLICE STATION.
- ANNEXURE II** ACCUSED COPY OF THE FINAL REPORT IN CRIME NO.1510/2014.
- ANNEXURE III** COPY OF THE LETTER DATED 14.08.2012 ISSUED BY THE OFFICE OF TALUK SUPPLY OFFICER,
- ANNEXURE IV** COPY OF THE LETTER DATED 12.08.2013 ISSUED BY TALUK SUPPLY OFFICER.
- ANNEXURE V** COPY OF THE REPORT SUBMITTED BY TALUK SUPPLY OFFICER.
- ANNEXURE VI** COPY OF THE GOVERNMENT ORDER DATED 05.10.2017.