



KERALA EXCISE DEPARTMENT

#File Number#

Commissionerate of Excise

Thiruvananthapuram,

Dated:05/07/2021

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Circular No. -EXC23/2021/EXCISE

Sub: Excise- Home department - Direction from NCB - Implementation of Supreme Court direction in Kishanbhai case - Procedure against erring investigating offices in NDPS cases- Reg

Ref: 1. Government letter No. HOME-SSAI/159/2021- HOME dated 17-4-2021
2. Judgment, in the case of State of Gujarat Vs Kishanbhai etc in Criminal Appeal No. 1485 of 2008

Honorable Supreme Court of India in State of Gujarat Vs Kishanbhai etc. Criminal Appeal No. 1485 of 2008, has observed as follows in Para 21 of its judgement

"On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting officials(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses,

must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months"

Accordingly, following procedure for taking action against erring investigation/prosecuting officials/officers in NDPS case is laid down.

In the case of acquittal, the Deputy Excise Commissioners of concerned districts should analyze the judgement of the trial court and if he feels necessary should consult the Special Public Prosecutor or Public Prosecutor on scope for appeal and for identifying the errors by the investigating/prosecuting officer/official and to analyze whether there has been any lapse or failure on part of any investigating or prosecuting officer or any other government servant in connection with the acquittal. If any culpable lapses or negligence is noted, the Deputy Excise Commissioners of concerned districts should forward the details of such erring officials/officers to the Zonal Joint Commissioner of Excise concerned.

The Joint Excise Commissioner concerned should record his analysis on the matter and if he feels any disciplinary/ departmental action is required, that recommendation should also be included and the report should be forwarded to the Additional Excise Commissioner (Enforcement) for further action.

In such analysis and comments, apart from action against investigating/prosecuting officer/official, action can also be recommended against any other government servant (for example those participating in searches, drawing sample etc) if lapses attributable to them come to notice.

S. AANANTHAKRISHNAN IPS

Signature valid
Digitally signed by S. Aanthakrishnan S
Date: 2021.07.05 12:15 IST
Reason: Approved

Commissioner of Excise.

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