

Chandran Vs. Excise Inspector

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Court : Kerala

Decided On : Feb-04-2013

Judge : Hon'Ble Mr. Justice B.Kemal Pasha

Appellant : Chandran

Respondent : Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HON'BLE MR. JUSTICE B.KEMAL PASHA MONDAY, THE 4TH DAY OF FEBRUARY 2013
15TH MAGHA 193 CrI.Rev.Pet.No. 1372 of 2002 (C) -----
AGAINST THE ORDER/JUDGMENT IN CC.152/1997 of
J.M.F.C.,KUNNAMANGALAM REVISION
PETITIONER(S)/APPELLANT/ACCUSED NO.1:
----- CHANDRAN, S/O. CHATHUKUTTY,
MANNARAKKAL HOUSE,KUNNAMANGALAM AMSOM KARENTHUR
DESOM,KOZHIKODE. BY ADV. SRI.T.G.RAJENDRAN
RESPONDENT/RESPONDENT/COMPLAINANT: ----- 1.
THE EXCISE INSPECTOR, KUNNAMANGALAM.

2. STATE OF KERALA, REP; BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM. BY PUBLIC PROSECUTOR SMT. MADHUBEN THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04-02-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B. KEMAL

ORDER

Petitioner is the first accused in C.C. No.152 of 1997 of the Judicial First Class Magistrate's Court, Kunnamangalam and the first appellant in Crl.Appeal No.125 of 2000 of the Sessions Court, Kozhikode. C.C.No. 152 of 1997 was as a result of a complaint filed by the Excise Inspector, Kunnamangalam Excise Range alleging an offence punishable under Section 55(a) of the Abkari Act against the appellant and the second accused.

2. The prosecution case is that on 11.12.1996 at about 5 p.m, while PW1 Excise Preventive Officer along with PW2 Excise Guard were on patrol duty, they saw the petitioner pouring some liquid from a white can into a black can which was Crl.R.P.No. 1372 of 2002 -:2:- in the possession of the second accused, in front of a pump house of the water authority at the bank of Ponoor river, Karanthur Desom. On seeing the excise party, the petitioner and the other accused tried to move away. PWs.1 and 2 stopped them and seized the cans containing the liquid. On a preliminary examination by PW1 it was revealed to him that the cans contained illicit arrack. The petitioner and the other accused were placed under arrest. After effecting the seizure of the cans and the contents through Ext.P1 mahazar, samples were drawn from both the cans. One of the samples was subjected to chemical analysis which revealed that it contained 30.37% by volume of ethyl alcohol. The trial Court found the petitioner and the other accused guilty of the offences under Section 55(a) of the Abkari Act and convicted them thereunder and sentenced each of them to undergo rigorous imprisonment for six months and to pay a fine of Rs.25,000/-, in default, to undergo rigorous imprisonment for two more months. The conviction and sentence passed by the trial Court was unsuccessfully challenged in Crl.Appeal No.125 of 2000 by the Crl.R.P.No. 1372 of 2002 -:3:- petitioner. The Court below confirmed the conviction and sentence passed by the trial Court.

3. The learned counsel for the revision petitioner has argued two points only, (1) the versions of PWs.1 and 2 regarding the seizure are contradictory and (2) only

one of the samples collected was subjected to chemical analysis and therefore, there is no evidence regarding the presence of ethyl alcohol in one of the cans.

4. On a careful reading of the depositions of PWs.1 and 2, it could be seen that there was no contradiction at all in the depositions of PW1 and PW2. It is true that PW3 and PW4, the independent witnesses, who were attestors to Ext.P1 mahazar, turned hostile to the prosecution. At the same time, both PWs.3 and 4 have admitted their signatures in Ext.P1. It seems that their testimony stand unchallenged. There is absolutely no evidence as to when and where they have affixed their signatures in Ext.P1. They were declared hostile only because of the fact that they had revealed before the trial Court that they did not see the seizure of arrack from the possession of the Crl.R.P.No. 1372 of 2002 -:4:- accused. In fact, they were not cited by the prosecution to prove the seizure of arrack; whereas they were cited by the prosecution to prove Ext.P1. When Ext.P1 was validly proved by PWs.3 and 4 it was the duty on the part of the accused to bring out as to when and where they had affixed their signatures in Ext.P1.

5. Regarding the next point argued by the learned counsel for the petitioner, it has to be noted that the prosecution case that PWs.1 and 2 could see the petitioner pouring some portion of the contents in the white can into the black can in the possession of the second accused. One sample each from both cans were taken and one of the samples was subjected to chemical analysis. When some portion of the contents in the white can was seen transferred to the black can, there is no meaning in contending that the samples taken from both the cans should be subjected to chemical analysis.

6. The learned counsel for the petitioner has further pointed out that there is absolutely nothing to show that the contents of the cans were illicit arrack. If the arrack contained Crl.R.P.No. 1372 of 2002 -:5:- in both the cans were not illicit arrack, the burden was heavily on the part of the accused to prove that the same was not illicit arrack whereas it was validly collected arrack and transported by them.

7. Lastly, the learned counsel for the revision petitioner has pointed out that the offence under Section 55(a) of the Abkari Act then as it stood prior to the

amendment, was punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than Rs.25,000/-. It is true that any minimum sentence of imprisonment was not stipulated; whereas the minimum amount of fine that could be imposed was stipulated.

8. Taking into consideration the quantity of arrack seized from the possession of the petitioner as four litres, this Court is of the view that by retaining the fine amount of Rs.25,000/- with the default sentence imposed by the trial Court which was confirmed by the appellate Court, the sentence of rigorous imprisonment for six months can be modified as simple imprisonment for three months. Crl.R.P.No. 1372 of 2002 -:6:- In the result, this Crl.R.P. is allowed in part and the conviction passed by the appellate Court is confirmed and the sentence of fine with the default sentence imposed is also confirmed. The sentence of rigorous imprisonment for six months imposed on the petitioner is modified as simple imprisonment for three months. B. KEMAL PASHA, JUDGE ul/-

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