

Kannan Vs. State of Kerala

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Court : Kerala

Decided On : Dec-18-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Kannan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN WEDNESDAY, THE 18TH DAY OF DECEMBER 2013 27TH AGRAHAYANA, 1935 CRL.A.No. 1342 of 2003 ()
----- AGAINST THE

JUDGMENT

IN SC1172002 of ADDITIONAL DISTRICT COURT (ADHOC), FAST TRACK COURT-1, PALAKKAD, DATED 17-07-2003 APPELLANT(S)/ACCUSED:
----- KANNAN, S/O.VELLAKUTTY, H.NO.13/393, MUTTICHIRA, KUNISSERY, ALATHUR. BY ADVS.SRI.M.T.SURESH KUMAR SRI.M.T.SURESHKUMAR SRI.R.RANJITH RESPONDENT(S)/COMPLAINANT:
----- STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR ADV.SRI.N.SURESH THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 18-12-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: am/ V.K.MOHANAN, J.

----- Crl.A.No.1342 of 2003 ----- Dated this
the 18th day of December, 2013.

JUDGMENT

This appeal is directed against the judgment dated 17.7.2003 in S.C.No.117/02 of the court of Additional Sessions Judge (Fast Track Court-I), Palakkad, since the sole accused therein is aggrieved by the conviction and sentence imposed on him for the offence under section 55 (a) of the Abkari Act.

2. The prosecution case is that, the accused was found in possession of 5 ltrs. of arrack in the verandah of his residential house at Kunissery, Muttichira, bearing building No.XIII/393 of Erimayoor Grama Panchayat, on 27.12.2000 at about 10.55 a.m., which was detected by the Sub Inspector of Police, Alathur, and the accused was arrested on the spot and the contraband article were seized then and there. Thus according to the prosecution, Crl.A.No.1342 of 2003 2 the accused has committed the offence punishable under section 55(a) of the Abkari Act.

3. During the trial of the case, Pws.1 to 6 were examined and Exts.P1 to P6 documents were produced and M.O.1 kannas was identified as material objects from the side of the prosecution. No evidence from the side of the defence. The trial court has finally found that the prosecution has proved beyond doubt that the accused had kept about 5 ltrs. of arrack in his residential house and accordingly, the accused is found guilty of the offence under 55(a) of the Abkari Act and consequently he is convicted thereunder. On such conviction, he is sentenced to undergo rigorous imprisonment for 3 years and also sentenced to pay a fine of `1 lakh and in default of payment of fine, he is directed to undergo simple imprisonment for a further period of 6 months. Set off is allowed. This appeal is directed against the above finding and order of conviction and sentence.

4. I have heard Adv.Sri.M.T.Suresh Kumar, the Crl.A.No.1342 of 2003 3 learned counsel for the appellant and Adv.Sri.N.Suresh, the learned Public Prosecutor for the State.

5. To prove the detection, seizure and arrest of the accused, though altogether four witnesses are examined, Pws.4 and 5, who are official witnesses, supported the case of the prosecution. The independent witnesses examined as Pws.1 and 2 have turned hostile to the prosecution. Thus, when Pws.4 and 5 were examined, they deposed that while the police party, lead by PW4, were conducting raid in the locality within the jurisdiction of Alathur Police Station, particularly in the locality of the place of occurrence, PW4 received reliable information about the storage of arrack in the house of the accused and they proceeded to the house of the accused and when they reached the house, the accused and his wife were present in the house and on search, they detected a black can having 5 ltr. capacity which contain full of illicit arrack and consequently the accused was arrested by preparing the arrest memo and the contraband article was seized as per CrI.A.No.1342 of 2003 4 the Search list prepared then and there in the presence of independent witnesses. According to the prosecution, on completing the above proceedings, Pws.4 and 5 and other Police party returned to the Police Station, wherein PW4 suo motu registered Ext.P4 FIR. It is also the case of PW4 that he had prepared a requisition note for sending the samples for chemical analysis and thus obtained a chemical analysis report. Thus when PW4 was examined, Ext.P3 arrest memo, Ext.P4 FIR, Ext.P5 forwarding note and Ext.P6 chemical analysis report are marked through him. PW4 has also identified M.O.1 can. PW5-the Head Constable attached to Alathur Police Station when examined, he had also deposed in tune with the deposition of PW4. Even though Pws.1 and 2 turned hostile, as PW1 admitted his signature in Ext.P1 search list, the same has been marked through PW1. PW3-the then Secretary of Erimayoor Grama Panchayat was examined to identify the signature of the Secretary, who was the predecessor of PW3 and who issued the ownership certificate and thus, CrI.A.No.1342 of 2003 5 Ext.P2 ownership certificate with respect to the house of the accused was proved through PW3. The further investigation was undertaken by PW6, the then Circle Inspector of Police, Alathur, who laid the charge on completing the investigation. It is on the basis of the above evidence and materials, the trial court entered into its finding and convicted the appellant.

6. Learned counsel for the appellant vehemently submitted that on the sole ground of delay in producing the samples and material objects before the court, the

conviction recorded by the trial court is liable to be set aside. In support of the above submission, the learned counsel placed reliance upon the decision reported in Appukuttan Vs. State of Kerala (2013(2) KLT SN138. The learned Public Prosecutor though resisted the arguments advanced by the learned counsel for the appellant, he had to admit that there was delay in producing the samples before the court in view of the self speaking document like Ext.P5. Crl.A.No.1342 of 2003 6 7. I have carefully considered the submissions made by the learned counsel for the appellant and the learned Public Prosecutor and I have perused the materials and evidence on record.

8. In the light of the above contentions and in view of the evidence and materials on record, the question that arose for consideration is whether the findings of the court below and the conviction recorded by it against the appellant are sustainable. As rightly pointed out by the learned counsel for the appellant, according to me, the delay occurred in the present case in producing the samples as well as the material objects before the court and the further delay occurred in furnishing the report are sufficient to interfere with the findings of the court below, especially in view of the decision in Appukuttan Vs. State of Kerala (2013(2) KLT SN138 as well as a Division Bench decision of this Court reported in Ravi Vs. State of Kerala (2011(3) KLT353. According to the prosecution, the seizure was effected on 27.12.2000 at about 10.55 a.m. Crl.A.No.1342 of 2003 7 and consequently FIR was registered on the same date. Though I have repeatedly gone through the evidence of Pws.4 and 5, there is no whisper in their evidence as to on which the date actually the samples and the material objects were produced before the court. Even though there is no positive evidence in the deposition of Pws.4 and 5 with respect to the date on which the samples and the material objects had been produced, the prosecution's own document, particularly Ext.P5 forwarding note and Ext.P6 chemical analysis report shows that there is inordinate delay in producing the samples. Ext.P5 forwarding note bears the date 2.2.2001 and it received in the court only on 5.2.2001 inspite of the fact that the alleged recovery was effected on 27.1.2000. In the absence of any property list and in the absence of any oral evidence in the deposition of Pws.4 and 5, it can be legitimately presumed that the samples were produced before the court only on 2.2.2001. If that be so, the further question that arose for consideration is, who

was the custodian of the samples and CrI.A.No.1342 of 2003 8 the material objects after the alleged seizure of the same on 27.12.2000 till the same was produced before the court on 5.2.2001. Regarding those aspects also, there is no whisper in the testimony of Pws.4 and 5. So, the chance of tampering the samples and the material objects cannot be ruled out. If that be so, on that ground alone, no legal sanctity can be attached to Ext.P6 chemical analysis report.

9. Further, it is relevant to note that, though the samples were produced before the court on 5.2.2001, the samples seen forwarded to the chemical analysts' lab only on 26.2.2001 from the court. But the chemical analysis report is dated 26.9.2001 and there is a delay of 7 months in furnishing the report. The Division Bench of this Court in the decision cited supra has observed in that decision that, "There is no statutory mandate to "produce" the property before the Court "forthwith". But the very fact that the statute insists on production of the property before an officer of a particular designation or rank is to ensure that there is no misuse of the property. Likewise, unless the property is before Court, CrI.A.No.1342 of 2003 9 there cannot be a proper ascertainment of the nature and content of the property by requesting the service of an expert through the instrumentality of the Court." Thus, the Division Bench has concluded that, "Hence, production of the property before Court without unreasonable delay is also a necessary requirement of law. Delay in producing the property before Court, by itself, cannot be fatal to the prosecution if the delay can be satisfactorily explained." After considering the statute, this Court has held in the above decision that, "What is enjoined by the statute is only that the seizure of the property should be reported forthwith to the Court. But we hasten to add that the production of the property before Court (wherever it is practicable) should also take place without unnecessary delay. There should be explanation for the delay when there is delayed production of the property." In the present case, the delay is inordinate and the samples and the material objects were produced before the court only on 5.2.2001, though the recovery was effected on 27.1.2000. In the absence of any explanation, there is no question of appreciating the explanation about the delay. CrI.A.No.1342 of 2003 10 So, in the light of the above Division Bench decision, the unexplained inordinate delay in producing the samples and the material objects before the court would certainly go against the prosecution. In this juncture it is relevant to

note that in the decision reported in Narayani Vs. Excise Inspector (2002(3) KLT725, this Court has held that, "No evidence is forthcoming as to who was in possession of contraband till it was produced in court and it is evident from the testimony of PW4 that he was not in custody of the contraband." In the present case also, any of the prosecution witnesses including Pws.4, 5 or 6 had not claimed that the samples were in their custody and the same were kept intact without any chance of tampering the same. So, on that aspect also, the present prosecution case is liable to be interfered with.

10. In the light of the above discussion and in view of the evidence and materials referred to above, particularly in view of the decisions cited supra, according to me, the prosecution has miserably failed to prove its allegation CrI.A.No.1342 of 2003 11 against the appellant/accused beyond reasonable doubt and therefore I am unable to concur the findings and conviction recorded by the trial court. Consequently, the conviction and sentence imposed on the appellant/accused as per the impugned judgment is set aside. In the result, this appeal is allowed setting aside the judgment dated 17.7.2003 in S.C.No.117/02 of the court of Additional Sessions Judge (Fast Track Court-I), Palakkad, and the appellant is acquitted of all the charges levelled against him and the bail bond if any executed by him stand cancelled and he is set at liberty. Sd/- V.K.MOHANAN, Judge ami/ //True copy// P.A. to Judge

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