Vasu Vs. State of Kerala

Vasu Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1126002

Court : Kerala

Decided On : Jan-29-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Vasu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY, THE29H DAY OF JANUARY20149TH MAGHA, 1935 CRL.A.No. 1571 of 2004 ( ) -------------------------- SC362003 of ADDITIONAL SESSIONS COURT,FAST TRACK (ADHOC)-II, KOZHIKODE APPELLANT(S)/ACCUSED:: -- VASU, S/O. KUNHIKANNAN, MUTHIRAPARAMBIL HOUSE, KOYILANDY TALUK. BY ADV. SRI.P.V.KUNHIKRISHNAN RESPONDENT(S)/STATE:: -- STATE OF KERALA, REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA. BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN THIS CRIMINALAPPEAL HAVING BEEN FINALLYHEARD ON2901-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

------------------------------------ Crl.Appeal No.1571 of 2004 ------------------------------------ Dated this the 29th day of January, 2014.

JUDGMENT

Appeal filed under Section 374 of the Code of Criminal Procedure.

2. Appellant challenges the conviction and sentence imposed on him under Section 55(a) of the Abkari Act (for short, "Act") by the learned Additional Sessions Judge, Fast Track (Adhoc) II, Kozhikode in S.C.No.36 of 2003.

3. Prosecution case, shortly stated, is that on 25.05.2000 at about 6 p.m., the Excise party while patrolling through the public road found the appellant carrying five bottles, each containing 750 ml. Indian Made Foreign Liquor (IMFL) and two bottles, each containing 375 ml. IMFL. The total quantity recovered is 4= litres of IMFL. He was arrested and the contraband recovered. Arrest memo and mahazar were prepared. He was produced before the learned Judicial First Class Magistrate, Koyilandy and remanded. The property was also produced before the court in time. Crl.Appeal No.1571/2004 2 4. Evidence in this case consists of testimony of PWs 1 to 4 and Exts.P1 to P9 on the side of prosecution. DW1 is the accused himself. Material objects are MOs 1 to 4.

5. Heard the learned counsel for the appellant and the learned Public Prosecutor.

6. Learned counsel for the appellant submitted that even if we take the entire prosecution case as true, no offence is made out under Section 55(a) of the Act. To constitute an offence under Section 55(a) of the Act, it must be established that the accused was transporting/transiting or was in possession of liquor for the purpose of either import or export. This proposition of law is settled by judicial pronouncements in Surendran v. Excise Inspector (2004 (1) KLT404, Mohanan v. State of Kerala (2007 (1) KLT845 and Josekutty v. State of Kerala (2013 (1) KLT434.

7. Learned counsel for the appellant placed reliance on the oral evidence adduced by PWs 1 and 2 to argue that even if the evidence is accepted as true, the case falls much below the prescriptions in Section 55 (a) of the Act. Prosecution case is that appellant was found in possession of 4.500 litres of IMFL on the side of a public road. There is no material brought out to establish that the appellant

imported liquor from outside the State of Kerala so as to attract an offence under Section 55(a) of the Act. Reliance is placed on the decision rendered by the learned Single Judge of Crl.Appeal No.1571/2004 3 this Court in Narayanan Nair v. State of Kerala (2011 (3) KLT722. Distinction in the legal parlance regarding `bringing' and `possessing' was considered by the learned Single Judge. The relevant portion reads as follows: "The act of "bringing" is different from being in "possession". A person who is found to be in "possession" of a contraband article within the State may not be the one who has brought it into the State. So, only because a person is found to be in "possession" of a contraband article, it cannot be concluded that he himself brought the article into the State. A person shall not be convicted for offence under S.55(a) read with R.9 of the Rules, solely for the reason that he was found in "possession" of IMFL. Prosecution must prove that accused brought IMFL into the State. It can be proved either by direct evidence or by circumstantial evidence." In paragraph 13, the following observations are made: "The mere presence of an accused in a bus plying between two places situated within the State of Kerala en-route Mahe (a place which lies outside the territorial limits of the State) with some bottles of IMFL will not prove that he "imported" IMFL. The absence of stickers of KSBC on such bottles will also not by itself prove that those are "imported" by the accused who is Crl.Appeal No.1571/2004 4 found to be in possession of the same. Neither of the above facts are sufficient to hold a person guilty of offence under S.55(a) of the Act read with Rules 9 of the Rules, even though those may be two circumstances, coupled with proof of some other circumstances which may prove "import", depending upon facts and circumstances of each case. " Therefore, it is argued that merely on account of absence of label, it cannot be held that the appellant himself imported liquor from outside the State of Kerala. In the light of the precedents noted above, I find that the conviction on this score is not sustainable.

8. However, the appellant having found to be in possession of 4 = litres of IMFL has violated the provisions of Sections 10 and 13 of the Act. As per SRO No.127/99 (GO(P) No.22/99/TD dated 05.02.1999) the quantity of IMFL possessed by the individual at the relevant time is only three litres. Therefore, appellant has committed offence punishable under Section 63 of the Act. Hence the conviction and sentence will have to be altered. In the result, the appeal is

disposed as follows: i. Conviction of the appellant under Section 55(a) and Rule 9 of the Foreign Liquor Rules is hereby set aside. ii. Appellant is found guilty of an offence punishable under Section 63 of the Act. Crl.Appeal No.1571/2004 5 iii. He shall pay a fine of `3,000/- (Rupees three thousand only), in default, he shall undergo imprisonment for a term which may extend to three months. With this modification, the appeal is disposed of. A. HARIPRASAD, JUDGE. cks