

Podiyan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Podiyan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY, THE 14TH DAY OF FEBRUARY 2014 25TH MAGHA, 1935 CRL.A.No. 475 of 2004 ()
----- AGAINST THE

JUDGMENT

IN SC4982002 of ADDL.SESIONS COURT, FAST TRACK (ADHOC-I), ALAPPUZHA DATED 2002-2004 APPELLANT/ACCUSED: -----
PODIYAN S/O. KOCHUKUNJU, REMYA BHAVAN, KANNANAKUZHAY MURI, THAMARAKULAM, MAVELIKKARA. BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL) RESPONDENTS/COMPLAINANT: -----
1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. EXCISE INSPECTOR, MAVELIKKARA EXCISE OFFICE, MAVELIKKARA. BY PUBLIC PROSECUTOR SRI. K.K.RAJEEV THIS CRIMINAL APPEAL HAVING

BEEN FINALLY HEARD ON 14-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: DSV/21/02 A. HARIPRASAD, J.

----- CrI.A.No. 475 of 2004
----- Dated this the 14th day of February, 2014

JUDGMENT

Appellant challenges the conviction under Section 8 of the Abkari Act and imposition of imprisonment and fine consequent to the conviction.

2. Prosecution case shortly stated is that the accused was found possessing 550 ML of arrack in a bottle on 18.10.2000 at about 12.40 p.m. near a bridge at Kannanakuzhy Muri in Thamarakkulam Village. The offence was detected by PW1 and his party. PWs 1 to 5 were examined and Exhibits P1 to P3 marked. MO1 is the material object. There was no evidence on the side of the accused. After considering the evidence, the trial court convicted the accused and sentenced him.

3. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor.

4. Exhibit P1 mahazar is the first document which CrI.A.No. 475 of 2004 2 came into existence in connection with the detection of the offence. It shows that while PW1 and his party were doing patrol duty, they found the accused carrying a bottle in his hand. On seeing the Excise party, he tried to run away from the spot. But he was apprehended. On examination, it was found that he possessed arrack measuring about 550 ML. He was identified by name and house name. Thereafter, the contraband was seized and Exhibit P1 mahazar was prepared from the spot. In support of this case, PW1, the Detecting Officer testified. Recitals in Exhibit P1 have been clearly deposed by him. In spite of cross-examination, there is not much dent made in his credibility regarding the detection. PW4 was the Preventive Officer, who was accompanying PW1. His evidence also lent support to the testimony of PW1. PW3, the Excise Inspector who conducted the investigation and laid the charge sheet. The learned counsel for the appellant contended that the material documents seen in the case diary was not marked by the prosecution at the time of trial. Those documents cannot be CrI.A.No. 475 of 2004 3 now

considered as the accused suffered prejudice on account of not marking those documents at the time of trial. The learned counsel for the appellant submitted that the accused was not arrested as contended by the prosecution. According to him the accused was arrested on 18.10.2000, not from the alleged place of occurrence, but from his house. The records sent by the trial court show the case diary, notice given at the time of arrest and arrest memo. None of these documents were marked. Exhibit P2 crime and occurrence report would show that the accused was produced before the Magistrate on 18.10.2000 itself. However, the non-consideration of case diary, notice of arrest and arrest memo caused substantial prejudice to the accused. The learned counsel for the appellant further contended that the sample was sent for analysis as per Exhibit P3 on 19.10.2000. It is also contended that there is no forwarding note produced and marked in this case. So much so, it is not evident as to who was in control of the sample till it was produced before the Chemical Analysis CrI.A.No. 475 of 2004 4 Laboratory. The learned counsel for the appellant contended that though Exhibit P3 analysis report shows a T.R.No. given to the sample, there is no document produced to show that the same T.R.No was assigned by the court in respect of the sample sent for analysis. It appears that these points were omitted to be proved by the prosecution at the time of trial. The learned Additional Sessions Judge did not consider these points to arrive at the conclusion that the accused was guilty. The learned Public Prosecutor submitted that on this count, the accused is not entitled to be acquitted. Considering the fact that the accused was not afforded an opportunity for a fullfledged fair trial, I find that the case deserves to be remitted back to the court below for a proper trial. Though the prosecutor contended that this cannot be viewed as a lacuna of the prosecution case, I am of the view that improper conduct of the trial by the prosecution is a lache on the part of the prosecution and the accused is entitled to defend his case properly. Therefore, in the interest of justice, I feel that this case has to be CrI.A.No. 475 of 2004 5 remanded back to the court below for a fresh trial. In the result, this appeal is allowed. The conviction and sentence passed by the court below is set aside. The matter is remanded back to the trial court for a fresh trial after affording an opportunity to both sides to adduce additional evidence, if any, in this matter. Considering the fact that this is a case of 2002, the court below shall dispose of the case within a period of six

months from the date of appearance of the accused. The appellant/accused shall appear before the court below on 10.03.2014. Sd/- (A. HARIPRASAD, JUDGE) // True Copy // P.A. To Judge DSV/18/02

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