

Ambunhi Vs. State

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Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Ambunhi

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA WEDNESDAY, THE 26TH DAY OF FEBRUARY 2014 7TH PHALGUNA, 1935 CrI.Rev.Pet.No. 2310 of 2003 ()
----- AGAINST THE

JUDGMENT

IN CRL.APPEAL NO. 134/1998 OF ADDL. SESSIONS COURT (ADHOC-I), KASARAGOD DATED 05/06-2003 AGAINST THE

JUDGMENT

IN CC4431996 OF J.F.C.M.-II, HOSDURG DATED 2006-1998 REVISION PETITIONER/APPELLANT/ACCUSED:

----- * AMBUNHI, AGED 62 YEARS (DIED) NEELAYI DESOM, POROL VILLAGE HOSDURG TALUK, KASARAGOD * ADDL. 2ND REVISION PETITIONER DAMODARAN V. AGED 49 YEARS, S/O.AMBUNHI RESIDING AT VALAVIL HOUSE NEELAYI, PUTHARIADUKAM

PO NILESHWARAM (VIA) KASARAGOD DISTRICT (IMPLEADED AS ADDL.2ND REVISION PETITIONER AS PER

ORDER

DATED 62.2.2014 IN CRL.M.A.NO.465/14) BY ADVS.SRI.M.SASINDRAN SRI.M.B.PRAJITH RESPONDENT/RESPONDENT/COMPLAINANT:

----- STATE REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKULAM BY PUBLIC PROSECUTOR SRI.A.J.JOSE AEDAIDI THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26.02-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B.KEMAL PASHA, J.

..... CrI.R.P. No.2310 of 2003
..... Dated this the 26th day of February, 2014

ORDER

~ ~ ~ ~ ~ The accused in C.C. No.443/1996 of the Judicial First Class Magistrate's Court-II, Hosdurg was found guilty of the offence under Section 55(g) of the Abkari Act, was convicted thereunder, and sentenced to undergo rigorous imprisonment for six months and to pay a fine of 25,000/-, in default, to undergo rigorous imprisonment for two more months. He unsuccessfully challenged the conviction and sentence before the Additional Sessions Court (Adhoc-I), Kasaragod, through Criminal Appeal No.134/1998. Thereafter, he preferred the present Criminal Revision Petition. During the pendency of this CrI.R.P., the said petitioner died. As fine forms part of the sentence, the CrI.R.P.2310/2003 :

2. : matter did not abate and, therefore, the legal heir of the deceased petitioner has come on record as additional second revision petitioner.

2. The prosecution case is that on 18.04.1996 at 5.30 p.m., the deceased petitioner was found in possession of 12 litres of wash in contravention of the provisions of the Abkari Act, at a place called Nilai in Perole village. The case was detected by PW2, who was the Preventive Officer attached to the Hosdurg Excise

Range.

3. According to PW2, on realising that the contraband, which was found in possession of the deceased petitioner (hereinafter referred to as the accused), was wash, he placed the accused under arrest. A sample of 200 ml. of wash was drawn in a 375 ml. bottle. He seized the materials through Ext.P1 mahazar. He identified the tin, which contained the wash, as MO1. The sample was produced before court and the same was forwarded for chemical analysis. Ext.P3 report of chemical analysis CrI.R.P.2310/2003 :

3. : shows that the sample contained 3.16% by volume of Ethyl Alcohol.

4. Heard Sri.M.Sasindran, learned counsel for the additional second revision petitioner and Sri.A.J.Jose Aedaodi, learned Public Prosecutor for the State. The learned counsel for the present petitioner has argued that either the contraband or the sample allegedly drawn was not labelled. It is also argued that even though the crime was allegedly detected on 18.04.1996, Ext.P2 occurrence report was produced before court on 20.04.1996. Further, the contraband and the sample were produced before court only on 06.06.1996. It is argued that the delay has not been explained in any manner and, therefore, the conviction as well as the sentence are liable to be set aside. Per contra, the learned Public Prosecutor has argued that the conviction and sentence passed by the trial court which were upheld by the appellate court do not call for any interference at all, as it do not suffer from any illegality, irregularity or impropriety. CrI.R.P.2310/2003 :

4. :

5. The learned counsel for the present petitioner has invited my attention to the decision in Ravi Vs. State of Kerala and another [2011 (3) KHC121(DB)], wherein it was held that the provisions of the Abkari Act mandate that the seizure of the property should be reported forthwith to the court, and unnecessary delay in reporting the matter before the court or in the production of the contraband and sample before court render all the procedure illegal, which will invite the acquittal of the accused. Here, in this particular case, even though the seizure was on 18.04.1996, the matter was reported before court on 20.04.1996 only. The delay

has not been explained in any manner.

6. Apart from the above, even though the contraband article and sample were seized by PW2 on 18.04.1996, the same were produced before court on 06.06.1996 only. The said inordinate delay, which was quite unnecessary, has not been explained in any manner. It seems that the trial court has made a passing remark by Crl.R.P.2310/2003 :

5. : way of an observation that the said delay in reporting the matter before court as well as the production of the contraband and sample before court is not fatal enough to lead to the acquittal of the accused. The trial court as well as the appellate court have not taken note of the fact that the said delay was unnecessary and that it remained unexplained.

7. The said accused, who alleged to have committed the offence, is no more. The additional second revision petitioner, being the legal heir of the deceased accused, is forced to proceed with the matter, as fine amount forms part of the sentence. Considering the gross illegality, which has resulted in the unexplained delay in reporting the matter before court as well as in the production of the contraband and sample before court, I am of the view that the conviction and sentence passed by the trial court, which were upheld by the learned Additional Sessions Judge, are liable to be set aside. Crl.R.P.2310/2003 :

6. : In the result, this Crl.R.P. is allowed and the conviction and sentence passed by the Judicial First Class Magistrate's Court-I, Hosdurg in C.C. No.443/1996, which were upheld by the learned Additional Sessions Judge (Adhoc-I), Kasaragod in Criminal Appeal No.134/1998, are set aside. Sd/- (B.KEMAL PASHA, JUDGE) aks/26/02 // True Copy // PA to Judge

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