

Anthony Vs. State of Kerala

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Court : Kerala

Decided On : Mar-26-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Anthony

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD WEDNESDAY,THE26H DAY OF MARCH20145TH CHAITHRA, 1936 CRL.A.No. 522 of 2004 (B) ----- SC3212003 of ADDITIONAL DISTRICT COURT (ADHOC-I), ERNAKULAM APPELLANT(S)/ACCUSED: ----- ANTHONY S/O. DEVASSY, CHAKKEYETH VEEDU, KUNNAPPILLISSERY KARA, ALUVA VILLAGE. BY ADV. SRI.C.P.UDAYABHANU RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE EXCISE INSPECTOR, ANGAMALY, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM BY PUBLIC PROSECUTOR SMT.V.H.JASMINE THIS CRIMINALAPPEAL HAVING BEEN FINALLYHEARD ON2603-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

----- Dated this the 26th day of March, 2014.

JUDGMENT

Appeal filed under Section 374(2) of the Code of Criminal Procedure (for short, "Cr.P.C.").

2. When the matter was taken up for hearing, learned counsel for the appellant submitted that the appellant died on 29.09.2005. The deceased appellant was convicted under Section 55(a) of the Abkari Act (for short, "Act") by the trial court alleging that on 28.11.2001 at 5.15 p.m. he was found in possession of six bottles of Indian Made Foreign Liquor (IMFL), each containing 750 ml. of liquor at Parakkadavu Village of Aluva Taluk.

3. Heard the learned Public Prosecutor. Carefully perused the records.

4. Learned trial Judge examined eight witnesses at the time of trial and marked nine documents on the side of the prosecution. Material objects three in number were also marked.

5. PW1 worked as the Preventive Officer in the Excise Department. It is his case that PW1 along with his Officers was conducting Crl.Appeal No.522/2004 2 patrol duty. When they reached at the place of detection, they saw the appellant standing by the side of a road with a plastic bag. The appellant became perturbed on seeing the Excise Officers and tried to get away. He was restrained and questioned. It was revealed that the plastic bag possessed by him contained six bottles of IMFL of a total volume of 4.5 litres. It is the prosecution case that a glass tumbler was also possessed by him. It is alleged that the liquor was possessed by the appellant for intended sale. After arresting the appellant, samples were taken in the presence of the witnesses and Ext.P1 seizure mahazar was prepared from the place of detection. Ext.P2 is the arrest memo prepared in connection with the incident. Ext.P3 is the intimation of arrest given to his relatives. Thereafter, the case was registered. PW1 proved the contraband and the material records at the time of trial. PWs 2 and 5 were the Excise Guards, who accompanied PW1 at the time of detection of offence. Their testimony also render support to that of PW1.

Court below considered the evidence and found that the deceased appellant was guilty of an offence under Section 55(a) of the Act. Conviction of the deceased appellant is based on the evidence adduced in this matter and I do not find any reason to hold that the conviction of the deceased appellant is either bad or perverse. Therefore, I confirm the conviction.

6. Since the appellant expired pending this appeal, the Crl.Appeal No.522/2004 3 imprisonment part of the sentence has become unworkable. I do not find any reason to hold that the imposition of fine by the court below is vitiated by any illegality. Therefore, imposition of fine is also found to be proper and legal. Appeal is dismissed as it is found to be devoid of any merit. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

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