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Kunjan vs State of Kerala

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Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/600/2008

Appellant : Kunjan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945 CRL.A NO. 600 OF 2008 AGAINST THE JUDGMENT IN SC 155/2007 OF ADDITIONAL SESSIONS COURT FOR NDPS ACT CASES, THODUPUZHA

APPELLANT/ACCUSED: KUNJAN, THANNIKUZHIYIL HOUSE,MULLARINGADU KARA, VANNAPRAM VILLAGE,, THODUPUZHA. BY ADV SRI.S.RAJEEV RESPONDENT/COMPLAINANT: STATE OF KERALA, PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. (CRIME

NO.16 OD 2OO4, EXCISE RANGE OFFICE, THODUPUZHA). BY ADVS. G SUDHEER,PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

---------- Criminal Appeal No.600 of 2008 ---------- Dated this the 1st day of February, 2024

JUDGMENT

Aggrieved by the judgment dated 29.02.2008, passed by the Additional Sessions Court for NDPS Act Cases, Thodupuzha in S.C.No.155/2007, the appellant/accused has preferred this appeal. The appellant was convicted under Sections 55(a), 55(i) and 8(2) of the Abkari Act and sentenced to undergo rigorous imprisonment for a term of three years and pay a fine of Rs.1 Lakh.

2. The prosecution case is that on 12.08.2004 at 3.00 p.m, the accused was found in possession of 4 litres of coloured illicit arrack for sale at Mullaringadu.

3. After completing the investigation, final report was

submitted against the accused for the offences punishable under Sections 55(a), 55(i) and 8(2) of the Abkari Act before the jurisdictional Magistrate. The case was committed to the Sessions Court, from where it was made over to the Trial Court. On the appearance of the accused, charges were framed against him for the offences punishable under Sections 55(a), 55(i) and 8(2) of the Abkari Act. The accused pleaded not guilty to the charges, and therefore, he came to be tried by the Trial Court for the aforesaid offences.

4. The prosecution examined PWs 1 to 5 and proved Exts.P1 to P11 and MOs 1 to 5.

5. After the closure of the prosecution evidence, statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded

innocence. The Trial Court heard the matter under Section 232 Cr.P.C. and found evidence against the accused and hence he was called upon to enter on his defence and adduce evidence, if any, he may have in support thereof. After hearing the arguments addressed on both sides, the Trial Court convicted the appellant/accused for the aforesaid offences.

6. Heard Sri. S.Rajeev, the learned counsel appearing for the appellant/accused and Sri. G.Sudheer, the learned Public Prosecutor appearing for the respondent.

7. The learned counsel for the appellant challenged the

judgment of conviction and sentence on the ground that the

prosecution has not succeeded in establishing that the contraband substance seized at the scene of occurrence eventually reached the Chemical Examiner's Laboratory.

8. The learned counsel for the appellant relied on the following circumstances to substantiate his contentions:

(a) The seizure mahazar does not contain the nature and description of the seal stated to have been affixed on the bottles containing the sample.

(b) The specimen of the seal was not produced before the Court along with the samples.

(c) The various officials who handled the sample during its transit from the Court to the laboratory were not examined by the prosecution.

9. The alleged seizure was effected on 12.08.2004. The

detecting officer had drawn sample at the scene of occurrence. Exhibit P3 is the seizure mahazar prepared at the scene of occurrence. Exhibit P3 does not contain the nature and description of the seal stated to have been affixed on the bottles containing the sample. The detecting officer has not given evidence as to the nature of the seal used. The specimen of the seal was not produced before the Court.

10. In Bhaskaran K. v. State of Kerala and another (2020 KHC

5296), this Court held that the nature of the seal used by the detecting officer shall be mentioned in the seizure mahazar and the specimen of the seal shall be produced in the Court so as to enable the Court to satisfy the genuineness of the sample produced in the Court.

11. In Rajamma v. State of Kerala [2014 (1) KLT 506], this Court

held that if the specimen of the seal affixed on the bottle containing

the sample is not produced before the Court and forwarded to the Chemical Examiner for verification to ensure that the sample seal so provided is tallying with the seal affixed on the sample, no evidentiary value can be attached to the Chemical Analysis Report.

12. The sample was received in the Court by the Junior Superintendent of the Court, who was the custodian of the sample, as is evident from Ext.P8 property list. Exhibit P9 is the copy of the

forwarding note. Exhibit P9 does not contain the name of the official with whom the samples were forwarded to the laboratory. The space in Ext.P9 to enter the name of the official with whom the samples were forwarded is left vacant.

13. The Junior Superintendent of the Court and the Excise

Guard who delivered the samples to the laboratory were not examined by the prosecution. Non-examination of those officials is fatal to the prosecution. This view is fortified by the decision of the Apex Court in State of Rajasthan v. Daulat Ram [AIR 1980 SC 1314].

14. Therefore, Exhibit P10 Certificate of Chemical Analysis has no evidentiary value.

15. In Vijay Pandey v. State of U.P (AIR 2019 SC 3569) the Apex

Court held that mere production of a laboratory report that the sample tested was the contraband substance cannot be conclusive proof by itself and that the sample seized and that tested have to be co-related.

16. It is settled that the prosecution in a case of this nature

can succeed only if it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample which was drawn from the contraband substance said to have been seized from the possession of the accused {Vide: State of Rajasthan v. Daulat Ram [AIR 1980 SC 1314], Sasidharan v. State of Kerala [2007 (1) KHC 275]}.

17. In the instant case, the prosecution was unable to

establish the link connecting the accused with the contraband seized and the sample analysed in the laboratory. The accused is entitled to the benefit of doubt arising from the absence of link evidence as discussed above.

18. The upshot of the above discussion is that the conviction

and sentence entered by the Court below overlooking these vital aspects of the matter cannot, therefore, be sustained. In the result, the appellant/accused is acquitted of the offences alleged. He is set at liberty. The Criminal Appeal is allowed as above. Sd/- K.BABU, JUDGE KAS

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