

Venu vs State of Kerala

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Court : Kerala

Decided On : Oct-18-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/192/2022

Appellant : VENU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 18TH DAY OF OCTOBER 2023 / 26TH ASWINA,
1945 CRL.MC NO. 192 OF 2022 AGAINST THE ORDER CMP
1759/2021 IN CC 194/2021 OF JUDICIAL MAGISTRATE OF FIRST
CLASS -II, HARIPAD PETITIONER/S: VENU, AGED 45 YEARS S/O.
KUMARAN, APPUS VEEDU, CHINGOLI MURI, CHINGOLI VILLAGE,
ALAPPUZHA DISTRICT, PIN - 690532. BY ADVS. B.RENJITHKUMAR
SUNEESH KUMAR R. CLARA SHERIN FRANCIS RESPONDENT/S: 1
STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM -31. 2 THE DEPUTY
SUPERINTENDENT OF POLICE KAYAMKULAM, ALAPPUZHA

DISTRICT, PIN - 690502, 3 THE SUB INSPECTOR OF POLICE KAREELAKULANGARA POLICE STATION, ALAPPUZHA DISTRICT, PIN - 690559. OTHER PRESENT: M.P PRASANTH PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18.10.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

P.V.KUNHIKRISHNAN, J.

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Dated this the 18th day of October, 2023

ORDER

The above Crl.M.C is filed against Annexure A6 order by which an application under Section 239 Cr.P.C to discharge the accused is dismissed. The petitioner is the sole accused in CC No.194 of 2019, which is a case registered alleging offence punishable under Section 7

(1) (a) (ii) of the Essential Commodities Act, 1955. The case was filed

against the petitioner alleging that on 23.03.2019 at about 1.20pm the petitioner was found in possession of 14.5 litres of petrol in his house kept for sale in violation of the Motor Spirit and High Speed (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. Accordingly the case was registered as Crime No.427 of 2019 by the Kareelakulangara Police Station. It is the case of the petitioner that as per SRO No.311 of 2014 issued by the Government of Kerala, the authorised officer having power in the matter in dispute is the Deputy Superintendent of Police, Kayamkulam. Therefore, the prosecution case is bad because the final report filed on the allegation -3- of commission of offence punishable under Section 7 (1) (a) (ii) of the Essential Commodities Act is not having independent standing unless there is allegation of the violation of the provisions of the relevant order. Hence, it is submitted before the trial court that the petitioner may be discharged. That application was dismissed by the trial court as per Annexure A6 order. Aggrieved by the same, this Crl.M.C is filed.

2. Heard counsel for the petitioner and the Public Prosecutor.

3. It is submitted that the detection in these type of cases can

be done only by an officer not below the rank of Deputy Superintendent of Police. Admittedly in this case, the detection was conducted by the Inspector of Police. For that simple reason, the prosecution against the petitioner is to be quashed. The Apex Court in Avtar Singh and another v. State of Punjab (Crl.A.No.1711 of 2011), observed like this:

3. The facts in the case as noticed above as such are not in dispute. The only argument raised is about the power of the person who had seized cylinder on the basis of which the appellants were prosecuted. Clause 7 of the Order, which is -4- reproduced hereunder, prescribes officers who have the power. 7. Power of entry, search and seizure:-

(1) an officer or the Department of Food and Civil

Supplies of the Government, not below the rank of an Inspector authorised by such Government and notified by Central Government or any officer not below the rank of a Sales Officer of an Oil Company, or a person authorized by the Central Government or a State Government and notified by the Central Government may, with a view to ensuring compliance with the provisions of this Order, for the purpose of satisfying herself that this order or any order made thereunder has been complied with:

(a) Stop and search any vessel or vehicle which the Officer has reason to believe has been, or is being or is about to be, used in the contravention of this Order:

(b) Enter or search any place with such aid or assistance as may be necessary;

(c) Seize and remove with such aid or assistance

as may be necessary the entire quantity of any stock of liquefied petroleum gas in cylinders, cylinder valves and pressure regulators, alongwith the vehicles, vessels

or any other conveyances used in carrying such stock if he has

reason to suspect that any provision of this Order

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has been or is being or is about to be, contravened in respect of such stock and thereafter take or authorise the taking of all measures necessary for securing the production of the stock of liquefied petroleum gas in cylinder, cylinders, gas cylinder valves, pressure regulators, vehicles, vessels or other conveyances so seized before the Collector having jurisdiction under the provisions of section of the Essential Commodities Act, 1955 (10 of 1955) and for their safe custody pending such production....."

14. It nowhere prescribes that a Sub Inspector of the Police

can take action. No doubt, the aforesaid Clause provides that in addition to the specified officers, the persons authorised by the Central or State Government may take action under the Order. However, nothing has been placed on record to support the argument that the Sub Inspector of the Police was authorised to take action under the aforesaid

Order.

15. It is a settled law that where a power is given to do a

certain thing in a certain way, the thing must be done in that way or not at all. Other methods are necessarily forbidden. Reference can be made to Dharani Sugars and Chemicals Ltd. Vs. Union of India and Ors reported in

(2019) 5 SCC 480.

16. In the absence of the authority and power with the Sub- Inspector to take action as per the Order, the proceedings initiated by him will be totally

unauthorised and have to be struck down. -6-

4. Relying upon the above judgment this Court quashed the

proceedings in a similar cases in Crl.M.C.No.3637 of 2016 and Cr.M.C 1277 of 2021. In the light of the above principle, I think the prosecution against the petitioner is liable to be set aside. Therefore, this Crl.M.C is allowed. Annexure A6 order is set aside. All further proceedings against the petitioner in CC No.194 of 2019 before the Judicial First Class Magistrate Court-II, Harippad are quashed. sd/- P.V.KUNHIKRISHNAN JUDGE
das -7- APPENDIX OF CRL.MC 192/2022
PETITIONER ANNEXURES Annexure A1 TRUE COPY OF THE FIR IN CR. NO. STATION. Annexure A2 TRUE COPY OF THE CHARGE SHEET IN CR. NO. 427/2019 OF THE KAREELAKULANGARA POLICE STATION. Annexure A3 TRUE COPY OF THE MOTOR SPIRIT AND HIGH SPEED DIESEL(REGULATION OF SUPPLY, DISTRIBUTION AND PREVENTION OF MALPRACTICES) ORDER, 2005. Annexure A4 TRUE COPY OF THE NOTIFICATION S.R.O NO.311/2014. Annexure A5 TRUE COPY OF THE C.M.P NO. 1759/2019. Annexure A6 ORDER OF DISMISSAL OF THE C.M.P NO. MAGISTRATE COURT - II, HARIPPAD, DATED 07.12.2021.

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