

Suresh vs State of Kerala

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Court : Kerala

Decided On : Jan-03-2023

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/302/2006

Appellant : Suresh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU TUESDAY, THE 3RD DAY OF JANUARY 2023 / 13TH POUSHA, 1944 AGAINST THE JUDGMENT IN SC 985/2004 OF ADDITIONAL DISTRICT COURT (ADHOC) III, TRIVANDRUM CP 12/2002 OF JUDICIAL MAGISTRATE OF FIRST CLASS - II, TRIVANDRUM APPELLANT/S: SURESH HOUSE NO.15., KARIMADOM COLONY, CHALAI WARD,, MANACAUD VILLAGE, THIRUVANANTHAPURAM. BY ADV SRI.R.T.PRADEEP RESPONDENT/S: STATE OF KERALA REPRESENTED BY THE DIRECTOR GENERAL OF PROSECUTION, HIGH COURT OF KERALA, ERNAKULAM. OTHER PRESENT: BY SR PUBLIC PROSECUTOR SMT REKHA.S THIS CRIMINAL APPEAL HAVING

COME UP FOR ADMISSION ON 03.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

Aggrieved by the judgment dated 16.01.2006, passed by the Additional Sessions Court, Fast Track Court -III, Thiruvananthapuram in Sessions Case No. 985/2004, the accused has preferred this appeal. The appellant was convicted under Section 55(a) of the Abkari Act and sentenced to undergo simple imprisonment for a term of one year and pay a fine of Rs. One Lakh.

2. The prosecution case is that on 22.06.1998 at 18.30 hours, the accused was found in possession of 4 litres of arrack at Chala Karipattakada in violation of the provisions of the Abkari Act.

3. After completing the investigation, final report

was submitted against the accused for the offence punishable under Section 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 ..3.. trial Court. On the appearance of the accused charge was framed against him for the offence punishable under Section 55(a) of the Abkari Act. The accused pleaded not guilty to the charge and therefore, he came to be tried by the trial Court for the aforesaid offence.

4. The prosecution examined PWs 1 to 5 and proved Exts. P1 to P5 and MO-1.

5. After the closure of the evidence on behalf of the prosecution, 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. The trial Court, after hearing the arguments addressed on both sides, found the accused guilty of the offence under Section 55(a) of the Abkari Act and convicted him thereunder.

6. Heard Sri. R.T.Pradeep, the learned counsel ..4.. appearing for the appellant/accused and Smt. Rekha S., the learned Senior Public Prosecutor.

7. The learned counsel for the appellant

challenges the judgment of conviction and sentence on the ground that the prosecution failed to establish that the contraband substance allegedly seized from the place of occurrence was subjected to analysis in the Chemical Examiners Laboratory.

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

(i) The delay in the production of the properties before the Court has not been satisfactorily explained by the prosecution.

(ii) There are no materials to show that the sample drawn from the contraband allegedly seized from the possession of the appellant was subjected to chemical examination.

9. The alleged seizure was effected on 22.06.1998. Ext.P4 shows that the property allegedly seized from the ..5..

possession of the accused was produced before the Court only on 24.06.1998. The prosecution has not offered any explanation for the delay in the production of the property before the Court.

10. In Ravi v. State of Kerala [2011 (3) KHC 121] on the question of delay in production of properties a Division Bench of this Court held thus:

8. We, therefore, answer the reference as follows: It is not necessary to produce the article seized under S.34 of the Abkari Act before the Magistrate 'forthwith' either by virtue of S.102(3) Cr.PC or by virtue of any of the provisions of the Abkari Act or the Abkari Manual. What is enjoined by the statute is only that the seizure of the property should be reported forthwith to the Court. But we hasten to add that the production of the

property before Court (wherever it is practicable) should also take place without unnecessary delay. There should be explanation for the delay when there is delayed production of the property.

In Ravi's case (supra) the Division Bench held that production of the property before the Court should take place without unnecessary delay and that there should be explanation for the delay when there is delayed production of the property.

11. There is no satisfactory explanation for the ..6..

delay in the production of properties before the Court. The unexplained delay in the production of properties would lead to the conclusion that tampering with samples could not be ruled out.

12. The prosecution relies on Ext.P5, Certificate of

Chemical Analysis to contend that the appellant had possessed illicit arrack at the scene of occurrence. According to the prosecution, a five litre can containing arrack was seized. Ext.P1 seizure mahazar shows that the can found in the possession of accused was sealed at

the place of occurrence. The can containing the entire arrack was produced before the Court on 24.06.1998. Ext.P5 would show that a bottle containing 150 ml of clear and colourless liquid allegedly containing arrack was produced before the Chemical Examiner. Admittedly, the Detecting Officer had not drawn sample at the scene of occurrence. The prosecution has not given evidence as to how a bottle containing 150 ml of arrack reached the

hands of the Chemical Examiner. The Forwarding ..7.. note/requisition for sending sample to the laboratory has not been produced and marked. Therefore, the prosecution miserably failed to establish that the bottle containing 150 ml of liquid subjected to analysis in the Chemical Examiners Laboratory was from the contraband substance allegedly seized from the scene of occurrence. 13 The resultant conclusion is that the prosecution failed to establish that the arrack allegedly seized from the possession of the accused formed the basis of the

findings in Ext.P5 Certificate of Chemical Analysis. The prosecution failed to establish the link connecting the accused with the contraband seized. The trial Court has not considered these vital aspects.

14. 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. The appellant/accused is therefore found not guilty of the offence punishable under ..8.. Section 55(a) of the Abkari Act. In the result,

(i) The Appeal is allowed ;

(ii) The judgment of conviction and sentence passed against the accused is set aside ;

(iii) The accused is acquitted of the offence alleged ;

(iv) He is set at liberty ;

(v) Any amount deposited by the accused as per the interim orders of this Court shall be disbursed to him as per law. Sd/- K. BABU, JUDGE kkj

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