

Radhakrishnan vs State of Kerala

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Court : Kerala

Decided On : Feb-09-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : CRL.A/773/2009

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 9TH DAY OF FEBRUARY 2023 / 20TH MAGHA, 1944 CRL.A
NO. 773 OF 2009

JUDGMENT IN SC 130/2008 OF ADDITIONAL DISTRICT & SESSIONS

COURT (ADHOC)I, KOLLAM APPELLANT/1ST ACCUSED: RADHAKRISHNAN, S/O VASUDEVAN, VISHNUBHAVANAM, ADINADU THEKKU, ADINADU VILLAGE, KARUNGAPALLY. BY ADV SRI.T.GOPALAKRISHNAN
RESPONDENT/RESPONDENT: STATE OF KERALA INSPECTOR, EXCISE RANGE, KARUNAGAPPALLY,, THROUGH THE PUBLIC PROSECUTOR, HIGH

COURT OF KERALA (CRIME NO. 159/2004 OF EXCISE, RANGE, KARUNAGAPPALLY) SMT.S.REKHA. SR.P.P THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:2:-

JUDGMENT

Dated this the 9th day of February, 2023 This appeal has been preferred by the 1st accused in S.C.No.130/2008 on the files of the Additional District and Sessions (Adhoc) Court-I, Kollam (for short 'the court below') against the judgment dated 21.3.2009, convicting and sentencing him under Section 8(1) and (2) of the Abkari Act.

2. The appellant along with the 2nd accused faced trial for

the offence punishable under Section 8(1) and (2) of the Abkari Act. The prosecution case in short is that on 6.12.2004 at 1.30 pm, the appellant along with the 2nd accused were found in possession of 105 litres of arrack at the house of the 2 nd accused bearing No.XI/02 in Kulashekarapuram Panchayat for sale.

3. On the side of the prosecution, PW1 to PW5 were examined and Exts. P1 to P11 were marked. MOI and MOII were identified. After trial, the court below found that both the accused committed the offence punishable under Section 8(1) &

(2) of the Abkari Act. They were convicted for the said offence. -:3:-

They were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of 1,00,000/- each, with default sentence of simple imprisonment for three months under Section 8 (1) & (2) of the Abkari Act vide the impugned judgment. The said judgment is under challenge in this appeal.

4. Heard and perused the records.

5. The learned Senior Public Prosecutor brought to my attention the judgment of this Court in Crl.A.No.851/2009 dated 10.11.2010, whereby the appeal preferred by the 2 nd accused was allowed and he was acquitted.

6. The contraband article was admittedly seized from the house belonging to the 2nd accused. At the time of detection and seizure of the contraband, the appellant was also present along

with the 2nd accused in the said house. When the detecting officer questioned the 2nd accused, he stated that it was the appellant who brought the contraband article to his house and he only allowed the appellant to keep the same in his house. When the detecting officer questioned the appellant, he also admitted that it was he who kept the contraband article at the house of

-:4:- the 2nd accused. Relying on this prosecution version, this Court in Crl.A.No.851/2009 took a view that since the 2nd accused only permitted the 1st accused for storing the contraband article, he cannot be said to have stored or possessed the contraband and accordingly he was acquitted.

7. The case records would show that the appellant was

arrayed as an accused on two grounds. (1) He was present in the house at the time of seizure. (2) His confession statement as well as the confession statement of the 2nd accused that he brought and kept the contraband article in the house of the 2nd accused. Apart from the said confession statement, there are no

materials to connect the appellant with the crime. As stated already, the appellant does not have any connection at all with the house from where the contraband articles were seized. For the mere reason that he was present at the time of detection, it cannot be said that he has any connection with the material object. In these circumstances, I am of the view that the conviction against the appellant also would not stand.

8. In the light of the above findings, the conviction and -:5:-

sentence passed by the court below are set aside. The appellant is found not guilty of the offence charged against him and accordingly he is acquitted. The criminal appeal is allowed. sd/- DR. KAUSER EDAPPAGATH JUDGE kp