

Mohanan vs State of Kerala

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Court : Kerala

Decided On : Dec-04-2023

Judge : Honourable Mr. Justice P.Somarajan

Appeal No. : CRL.A/1770/2006

Appellant : Mohanan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN
MONDAY, THE 4th DAY OF DECEMBER 2023 / 13TH AGRAHAYANA,
1945 CRL.A NO. 1770 OF 2006 AGAINST THE JUDGMENT DATED
26.07.2006 IN SC 859/2001 OF ADDITIONAL SESSIONS COURT
(ADHOC)-IV, THIRUVANANTHAPURAM CP 1/2001 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, NEDUMANGAD

APPELLANT/ACCUSED: MOHANAN, S/o KUNJAN KANI, VAZHAMALA
CHARUVIL VEEDU, PANAYAMUTTOM, ANADU MURI, PANAVOOR
VILLAGE. BY ADVS. T.A.UNNIKRISHNAN K.SATHEESH KUMAR
RESPONDENT/COMPLAINANT: STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. SANGEETHARAJ N.R. THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 04.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Crl. Appeal No.1770 of 2006 2

JUDGMENT

It is against the conviction for the offence punishable under Section 8(1) and (2) of the Kerala Abkari Act, the accused came up. During the pendency of appeal, the accused passed away. The allegation is that he was found in possession of 5 litres of illicit arrack on the alleged date of detection. The trial court found that the accused is guilty of the offence under Section 8(1) and (2) of the Kerala Abkari Act and he is sentenced to undergo rigorous imprisonment for a period of two years and a fine of Rs.1,00,000/- with a default sentence. It is against that

order of conviction and sentence, the accused came up.

2. The learned Amicus Curiae fairly submitted that it

is not discernible from the records or the evidence adduced by the prosecution who had collected the sample alleged to have been sent for chemical analysis. No forwarding note was also produced. It is also submitted that what is produced before the court and marked as MO1 is only an empty 5 litre black coloured kannas. It is not clear what Crl. Appeal No.1770 of 2006 3 happened to the illicit arrack which was produced before the trial court. The fact that no evidence was adduced to show who had prepared, taken and sent the sample for chemical analysis and non production of the forwarding note would vitiate the trial. Hence, the finding of guilt of accused for the abovesaid offence under Section 8(1) and

(2) of the Kerala Abkari Act cannot be sustained, will

stand set aside. The accused is acquitted for all charges. In fact, the substantive sentence ordered by the trial court stood abated on the death of accused. The sentence awarded also will stand set aside. The Criminal Appeal will stand allowed accordingly. The assistance given by the Amicus Curiae Smt. Deepa

Noble is placed on record with high appreciation. Sd/- P.SOMARAJAN JUDGE
DMR/-

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