Moothoran vs Excise Range Officer and Another

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SooperKanoon Citation : sooperkanoon.com/1339770

Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr. Justice Johnson John

Appeal No. : CRL.A/2201/2007

Appellant : Moothoran

Respondent : Excise Range Officer and Another

Judgement :

Crl. Appeal No. 2201/2007 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE JOHNSON JOHN FRIDAY, THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 CRL.A NO. 2201 OF 2007 AGAINST THE JUDGMENT DATED 02.11.2007 IN SC 921/2004 OF ADDITIONAL DISTRICT & SESSIONS COURT, FAST TRACK (ADHOC-II), KOZHIKODE APPELLANT/ACCUSED: MOOTHORAN, S/O. KEERAN, POLAMPOYIL THAZHATH HOUSE, CHEVAYUR AMSOM, DESOM,, KOZHIKODE. BY ADV SRI.T.G.RAJENDRAN RESPONDENTS/COMPLAINANT & STATE: 1 EXCISE RANGE OFFICER, KOZHIKODE EXCISE RANGE. 2

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,, HIGH COURT OF KERALA, ERNAKULAM. SRI. M.P. PRASANTH, PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21.12.2023, THE COURT ON 22.12.2023 DELIVERED THE FOLLOWING:

JOHNSON JOHN, J.

--- Crl. Appeal No. 2201 of 2007 --- Dated this the 22nd day of December, 2023.

JUDGMENT

The appellant, who is the accused in S.C. No. 921 of 2004 on the file of the Additional District and Sessions Judge, Fast Track (Adhoc-II), Kozhikode, is challenging the conviction and sentence imposed on him for the offence punishable under Section 55 (g) of the Kerala Abkari Act.

2. As per the impugned judgment dated 02.11.2007, the appellant was convicted and sentenced to undergo rigorous

imprisonment for one year and to pay a fine of Rs.1,00,000/- and in default to pay the fine, to undergo rigorous imprisonment for a further period of six months for the offence under Section 55(g) of the Kerala Abkari Act. Set off was also allowed.

3. The prosecution case is that at 12 hours on 29.01.2003, the

accused was found in possession of 5 litres of wash for the preparation of arrack in a can at Chervambalam-Thondayad road. The offence was detected by PW1, Assistant Excise Inspector, Excise Range Office, Kozhikode and after investigation, a final report was filed before the

Judicial First Class Magistrate-I, Kozhikode and the same was taken on file as C.P No. 15 of 2004. Thereafter, the case was committed to the Court of Sessions, Kozhikode and subsequently made over to Assistant Sessions Court (Principal), Kozhikode and thereafter to the Court of Additional District and Sessions Court, Fast Track (Adhoc-II), Kozhikode.

4. The trial court, after framing charge, examined PWs 1 to 6 and marked Exhibits P1 to P6 and MO1 from the side of the prosecution and no evidence was adduced from the side of the accused

5. After trial and after hearing both sides, the learned Additional Sessions judge found the accused guilty of the offence under Section 55

(g) of the Kerala Abkari Act and imposed the sentence as aforesaid.

6. Heard Sri. T.G. Rajendran, the learned counsel for the appellant and the learned Public Prosecutor, Sri. M.P. Prasanth.

7. The learned counsel for the appellant argued that the

prosecution has not marked the property list and there is no evidence as to when the alleged contraband was produced before the court and as to when the sample was forwarded to the chemical examiner and that the prosecution has failed to establish the link evidence to prove that the sample taken from the contraband seized from the accused had reached the hands of the chemical examiner in a fool proof condition.

8. Exhibit P4 copy of the forwarding note is dated 29.01.2003 and

Exhibit P5 report of the Chemical Examiner shows that the sample was received in the Chemical Examiners office at Kozhikode as per letter No. PR 30/2003 dated nil from the Judicial First Class Magistrate-I Kozhikode through Excise Guard Ajeeb S.P on 12.03.2003. The sample forwarded from the court as per Exhibit P4 forwarding note dated 29.01.2003 reached the Chemical Examiners Laboratory only on 12.03.2003 and the

prosecution has not explained the said delay. Further the prosecution has not examined the Thondi Clerk of the Court or the Excise Guard with whom the sample was sent for chemical analysis to establish the link evidence as to whether the sample despatched by the Thondi clerk has reached the Chemical Examiner in a tamper free manner.

9. The learned counsel for the appellant also cited the decision in Sasidharan v. State of Kerala [2012(2) KLT 392], wherein it is

held that an Assistant Excise Inspector is not an empowered officer

for the purposes of the Act and the notification, S.R.O. No. 361/2009 dated 8.5.2009, cannot be resorted to in respect of a case wherein the alleged occurrence was much prior to the notification. In this case, the alleged occurrence was on 29.01.2003.

10. On an evaluation of the available evidence, it is also found that the mandates necessary to ensure tamper proof collection of Crl. Appeal No. 2201/2007 :5: samples of the alleged contraband and its examination without tampering is not established by the prosecution beyond reasonable

doubt. Therefore, the appellant/accused herein is entitled to the benefit of doubt and as such, the conviction and sentence imposed by the trial court is liable to be set aside. In the result, the appeal is allowed and the conviction and sentence imposed by the trial court against the appellant/accused are set aside and he is acquitted of the offence punishable under Section 55(g) of the Kerala Abkari Act. The bail bond executed by the appellant/accused shall stand cancelled and he is set at liberty forthwith. The amount, if any being part of the fine amount deposited by the appellant/accused by order of this Court, shall be refunded to him. sd/- JOHNSON JOHN, JUDGE. Rv