

Sarojini vs the State of Kerala

Sarojini vs the State of Kerala

SooperKanoon Citation : sooperkanoon.com/1344548

Court : Kerala

Decided On : Mar-16-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.Rev.Pet/48/2004

Appellant : Sarojini

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 16TH DAY OF MARCH 2023 / 25TH PHALGUNA, 1944 CRL.REV.PET NO. 48 OF 2004 AGAINST THE ORDER/JUDGMENT DATED 05.12.2001 IN CRA 33/1999 OF DISTRICT COURT & SESSIONS COURT, THRISSUR IN TURN ARISING OUT OF CC 136/1997 OF JUDICIAL MAGISTRATE OF FIRST CLASS, VADAKKANCHERRY REVISION PETITIONERS/LEGAL HEIRS OF APPELLANT: 1 SAROJINI, AGED 38 YEARS, W/O. RAMAKRISHNAN, VELAMKODE DESOM, ELANAD VILLAGE, THALAPPILLY TALUK, THRISSUR, DISTRICT. 2 RAJESH MINOR REP. BY FIRST APPELLANT - MOTHER REIDING WITH HER. BY

ADVS. SRI.JIJO PAUL SRI.BABU S. NAIR RESPONDENT/STATE :
THE STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI -31. PP SRI.C.N PRABHAKARAN THIS
CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 16.03.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: CrI.R.P. 48 /04 -:2:-

BECHU KURIAN THOMAS, J.

----- CrI.R.P. No.48 of 2004 -----

Dated this the 16th day of March, 2023

ORDER

The husband of the 1st revision petitioner and the father of the

2nd revision petitioner was the accused in C.C. No.136 of 1997 on the files of the Judicial First Class Magistrate's Court, Wadakkancherry. The accused was convicted for the offence under section 55(g) of the Abkari Act, 1077. The learned Magistrate found the accused guilty and sentenced him to undergo simple imprisonment for a period of three months and to pay a fine of Rs.25,000/-, in default to undergo simple imprisonment for a period of three months. The appeal preferred as CrI.Appeal No.33 of 1999 on the files of the Sessions

Court, Thrissur was dismissed confirming the conviction and sentence. The accused had died during the pendency of the appeal and hence this revision petition is preferred by his legal heirs since sentence of fine was imposed.

2. The learned counsel for the revision petitioners pointed out that the forwarding note had not been produced in the instant case and that by itself is fatal to the prosecution case as held by this Court CrI.R.P. 48 /04 -:3:- in Sadasivan @ Para v. State of Kerala and Another (2020 KHC 478).

3. Learned Public Prosecutor on the other hand contended that though the forwarding note was not marked in evidence, the same ought not be treated as fatal in the peculiar circumstances of this case.

4. A perusal of the evidence adduced by the prosecution reveals that the contraband article allegedly possessed by the accused was stated to be wash containing ethyl alcohol of 9.98% by

volume as analysed by the chemical analyst. However, there is nothing to connect the sample sent for analysis with the contraband seized from the accused, in the absence of the forwarding note.

5. As held by this Court in Sadasivans case (supra) and in

other cases repeatedly that the absence of the forwarding note is fatal to the prosecution case. In the absence of the forwarding note, the prosecution cannot be held to have established beyond reasonable doubt the guilt of the accused. Therefore, the conviction of the accused is legally not proper.

6. Accordingly, I set aside the conviction and sentence imposed upon the accused by judgment dated 30.12.1998 in C.C. No.136 of CrI.R.P. 48 /04 :-4:-

1997 on the files of the Judicial First Class Magistrate's Court, Wadakkancherry as confirmed in CrI.Appeal No.33 of 1999 on the files of the Sessions Court, Thrissur. The criminal revision petition is allowed as above. sd/- BECHU KURIAN THOMAS
JUDGE vps

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com