

Pavithran vs State of Kerala

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Court : Kerala

Decided On : Dec-07-2023

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : Crl.Rev.Pet/3194/2006

Appellant : Pavithran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
THURSDAY, THE 7TH DAY OF DECEMBER 2023 / 16TH
AGRAHAYANA, CRL.REV.PET NO. 3194 OF 2006 AGAINST THE
JUDGMENT DATED 31.05.2006 IN CRA 453/2003 OF ADDITIONAL
SESSIONS COURT (ADHOC) FAST TRACK COURT-III,
PATHANAMTHITTA CC 380/1997 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, ADOOR REVISION
PETITIONERS/APPELLANTS/ACCUSED: 1 PAVITHRAN,
S/O.KUNJIRAMAN, KAIMALAZHIKATHU VEEDU, ENATHU
PADINJARE MURI, ENATHU VILLAGE, ADOOR TALUK. 2 JAYAN,
S/O.BHASKARAN, THONDUKANDATHIL KIZHAKAKEKARA, PUTHEN
VEEDU, PERINGINAD VILLAGE, ADOOR TALUK. 3 BHASKARAN

THONDUKANDATHIL KIZHAKAKEAKRA PUTHEN VEEDU, BY ADV
SRI.C.B.SREEKUMAR
RESPONDENTS/RESPONDENT/COMPLAINANT: STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,, ERNAKULAM.

SHRI SANAL P. RAJ, PUBLIC PROSECUTOR THIS CRIMINAL REVISION
PETITION HAVING BEEN FINALLY HEARD ON 07.12.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: Crl.R.P No.3194 of 2006 2

ORDER

This revision is at the instance of the accused in C.C.No.380 of 1997 on the file of
Judicial First Class Magistrate, Adoor, assailing the judgment in Crl.Appeal No.453
of 2003 on the file of Additional District and Sessions Judge (Adhoc) Fast Track
Court-III, Pathanamthitta, dated 31.05.2006.

2. Prosecution case is that on 26.11.1996, at 11.45

p.m., PW3-the Excise Inspector of Adoor Excise Range and party, while doing
patrol duty, got reliable information that spirit was illegally stocked in House
No.267 in Ward No.XII of Pallikkal Panchayat, and after sending search memo to
court, PW3 and party proceeded to that house. They entered the house through
the door which was lying open and on search of the house, seized 58 cans
containing 2800 litres of spirit. After completing the legal formalities, like sampling
labelling etc. the contraband was taken to the Excise Office

Crl.R.P No.3194 of 2006 3 and PW3 himself registered Ext.P4 occurrence report.
On investigation, it was found that the building from where the contraband was
seized belonged to the 3rd revision petitioner (A3), and his son the 2nd revision
petitioner (A2) rented out that building to the 1st revision petitioner (A1). Since the
1st revision petitioner was possessing 2800 litres of spirit in the building taken on
lease by him, he was charged under Section 55(a) of the Abkari Act. Since
revision petitioners 2 and 3 (A2 and A3) permitted the 1st revision petitioner for
storing spirit in their building, they were charged under Section 64A of the Abkari

Act.

3. On appearance of the revision petitioners before the

trial court, charge was framed under Section 55(a) and Section 64A of the Abkari Act, to which all of them pleaded not guilty and claimed to be tried. Thereupon, prosecution examined PWs 1 to 4, marked Exts.P1 to P9 and identified MO1 series. On closure of prosecution evidence, the revision petitioners were questioned under Section 313 of Cr.P.C.

Crl.R.P No.3194 of 2006 4 They denied all the incriminating circumstances brought on record but no defence evidence was adduced.

4. On analysing the facts and evidence and on hearing

the rival contentions from either side, the trial court found the revision petitioners 1 and 2 (A1 and A2) guilty under Section 55(a) of the Abkari Act, and they were convicted and sentenced to undergo rigorous imprisonment for one year and fine of Rs.25,000/- each, with a default sentence of simple imprisonment for a further period of three months. The 3rd revision petitioner (A3) was found guilty under Section 64A of the Abkari Act and he was convicted and sentenced to pay fine of Rs.25,000/- with a default sentence of simple imprisonment for three months.

5. Aggrieved by the conviction and sentence, the

revision petitioners preferred Crl. Appeal No.453 of 2003 and the appellate court, on re-appraisal of the facts and evidence, found the 2nd revision petitioner (A2) guilty under Section 64A of the Abkari Act and he was sentenced to pay

Crl.R.P No.3194 of 2006 5 fine of Rs.25,000/-. The conviction of the 1st revision petitioner (A1) under Section 55(a) of the Abkari Act was altered into one under Section 58 of the Abkari Act, without altering the sentence of rigorous imprisonment for one year and fine of Rs.25,000/-. The conviction and sentence of the 3rd revision petitioner under Section 64A of the Abkari Act by the trial court were upheld and maintained. Impugning the appeal judgment, the revision petitioners filed the above revision petition.

6. Now this Court is called upon to verify the legality, propriety and correctness of the conviction and sentence imposed on the revision petitioners by the courts below.

7. Heard learned counsel for the revision petitioners and learned Public Prosecutor.

8. Learned counsel for the revision petitioners is

assailing the conviction and sentence pointing out the material defects in the prosecution case, which according to him, are sufficient to vitiate the trial. Moreover, identity of CrI.R.P No.3194 of 2006 6 the accused were not proved beyond doubt.

9. PW3 has no case that on the date of detection, any

of the accused were arrested. According to him, the 2nd revision petitioner (A2) surrendered before the Excise Office on 27.11.1996. The 1st revision petitioner (A1) surrendered before the court and he was released on bail. Though he produced Ext.P5 rent deed, by which, the said building was rented out to the 1st revision petitioner by the 2nd revision petitioner (A2), he has no case that he ever identified the 1st revision petitioner or verified his address, with the address shown in Ext.P5 rent deed.

10. PWs 1 and 2, the independent witnesses, turned

hostile to the prosecution and according to them, they did not witness the search and seizure conducted by PW3. They denied the signatures also seen in Ext.P3 seizure mahazar. So the identity of the revision petitioners could not be proved by prosecution.

11. Learned counsel for the revision petitioner pointed

CrI.R.P No.3194 of 2006 7 out that in Ext.P3 seizure mahazar, no specimen impression of the seal is seen affixed. The specimen of the seal shall be provided in the seizure mahazar, and also in the forwarding note so as to enable the court to satisfy the genuineness of the sample produced in the court. In the absence of

specimen seal in the seizure mahazar, the genuineness of the seal found in the sample bottle lose its authenticity. Moreover, the detecting officer, who has drawn the sample, has to give evidence as to the nature of the seal affixed on the bottle containing the sample. Further the nature of the seal used shall be mentioned in the seizure mahazar also. (See Bhaskaran K. v. State of Kerala and Another [2020 KHC 5296]). In the absence of specimen impression of the seal in the seizure mahazar, the prosecution failed to prove the link evidence that the sample analysed in the Laboratory was the sample taken from the contraband possessed by the accused/revision petitioners, the benefit of which shall go to them.

Crl.R.P No.3194 of 2006 8

12. Prosecution did not produce the forwarding note

along with Ext.P8 property list. The forwarding note was also a material document to prove the seizure of the contraband at the place of occurrence, and it shall also contain the specimen impression of the seal. The sample has to be forwarded to the Chemical Analyst along with the forwarding note, which contains the specimen impression of the seal. The Analyst is verifying the sample seal provided in the forwarding note, to get it tallied with the seals found in the sample bottles. In the absence of forwarding note itself, we cannot say whether it contained specimen impression of the seal. So, the statement in the chemical report that the seals on the bottles were intact and found tallied with the sample seal provided is of no consequence.

13. Ext.P9 Chemical Report shows that the sample bottles were forwarded to the Chemical Examiners Laboratory on 06.05.1997. But it reached the Laboratory only on 08.05.1997 with a delay of two days. The

Crl.R.P No.3194 of 2006 9 prosecution was bound to explain that delay by examining the Excise Guard, who took the sample bottles from the court but that was not done. Since that delay stands unexplained, we cannot say that there was tamper proof despatch of the sample especially in the absence of forwarding note.

14. As we have seen, PW3 detected the offence

registered the crime, and he himself investigated the case. In Bhaskarans case cited (Supra), in paragraph 23 this Court held that without any exigencies of the situation, the detecting officer who registered the case himself conducted the entire investigation and filed the final report. The court

held that such one man show conducted by the officer has

definitely caused prejudice to the accused.

15. In the case on hand, there was no arrest of the

revision petitioners at the scene of crime. There is nothing to show that the accused were identified during the process of investigation. The building belonged to the 3rd revision

Crl.R.P No.3194 of 2006 10 petitioner as per Ext.P6 ownership certificate. The 2nd revision petitioner is his son and he, according to the prosecution, rented it out to the 1st revision petitioner. The person who issued Ext.P6 ownership certificate was not examined by the prosecution to prove that document. So also prosecution failed to prove the ownership of the 3rd revision petitioner over the building in question, and the dominion of the 2nd revision petitioner over that building.

Ext.P2 search list was seen produced before the jurisdictional Magistrate Court only on 05.05.1997, though the occurrence was on 26.11.1996. That also casts serious doubt regarding the genuineness of the prosecution case.

16. For all these reasons, the veracity of the

prosecution case is to be doubted and the revision petitioners are entitled to get the benefit of that doubt. The trial court as well as the appellate court, without noticing these material defects, convicted and sentenced the revision petitioners under Section 58 and Section 64A of the Abkari Crl.R.P No.3194 of 2006 11 Act. So the conviction and sentence are liable to be set aside.

17. In the result, setting aside the conviction and

sentence imposed on the revision petitioners by the courts below, the revision petitioners are found not guilty of the offences alleged against them, and they are acquitted there under. Their bail bonds are cancelled and they are set at liberty forthwith. Accordingly, this revision petition stands allowed. Sd/- SOPHY THOMAS, JUDGE DSV/-

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