

Sathyan vs State of Kerala

Sathyan vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1350504

Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Crl.Rev.Pet/159/2016

Appellant : Sathyan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM TH
SATURDAY, THE 30 DAY OF SEPTEMBER 2023 / 8TH ASWINA, 1945
CRL.REV.PET NO. 159 OF 2016 CRIME NO.4/2009 OF Nadhapuram
Excise Range Office, Kozhikode CRA 492/2014 OF ADDITIONAL
SESSIONS COURT, VATAKARA SC 163/2011 OF ASST. SESSIONS
COURT, VADAKARA REVISION PETITIONER/APPELLANT/ACCUSED:
SATHYAN,AGED 42,ODAYIL HOUSE, VILANGAD AMSOM,
VALAMTHODU DESOM, VATAKARA TALUK, KOZHIKODE DISTRICT.
BY ADVS. SRI.R.BINDU (SASTHAMANGALAM) SRI.PRASANTH M.P
RESPONDENT/RESPONDENT/COMPLAINANT-STATE: STATE OF
KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM, KOCHI - 682 031. BY PP SRI.M.C.ASHI THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CrI.RP No.159 of 2016 2

VIJU ABRAHAM, J.

..... CrI.R.P. No.159 of 2016
..... Dated this the 30th day of
September, 2023

ORDER

The revision petitioner herein is the accused in S.C. No.163 of 2011 on the file of the Assistant Sessions Court, Vadakara alleging commission of offence punishable under Section 8(1) of the Kerala Abkari Act.

2. The prosecution allegation in short is that, on 07.02.2009 at

about 9.00 a.m. while PW1 was doing patrol duty along with PW2 and other excise officials, they found accused carrying a jerry can containing 10 litres of arrack at a place near Aduppil Adivasi Colony, Nadapuram and thereby the accused has committed the alleged offence.

3. The prosecution in support of their case examined PWs 1 to

4 and Exts P1 to P11 were marked. The trial Court found the accused guilty and convicted him to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year. The trial Court also allowed set-off.

4. Aggrieved by the conviction and sentence imposed by the trial court, an appeal was preferred as CrI.Appeal No.492 of 2014 before

CrI.RP No.159 of 2016 3 the Additional Sessions Court, Vatakara which also ended up in dismissal whereby the conviction and sentence imposed by the trial

court was upheld.

5. Though it is true that the scope of interference by this court

exercising revisional jurisdiction is limited, it does not preclude this court from examining whether there is strict compliance with the statutory formalities mandated as per the Abkari Act. This court in Baburaj v. State of Kerala, 2021 (6) KLT 416, has held that given the stringent nature of the provisions of the Act and the harsh sentence provided, strict compliance of the statutory formalities specified in the Act is necessary. The presumption of official acts to have been performed regularly and properly as provided in Section 114 (e) of the Evidence Act has no application if official acts are not shown to be performed properly, as held in Sathi v. State of Kerala, 2007 (1) KLT SN 57. In this backdrop, it is to be considered as to whether the prosecution has proved the guilt of the accused without any reasonable doubt.

6. Learned counsel appearing for the petitioner raised various

contentions assailing the conviction and sentence. The first contention raised is regarding the delay in completing the investigation. The occurrence was on 07.02.2009. Ext.P9 chemical analysis report was ready on 21.07.2010. The complaint was filed only on 22.01.2011. The investigating officer PW4 was examined and he would submit that there is no special reason for the delay and therefore, there is no proper

Crl.RP No.159 of 2016 4 explanation for the delay in completing the investigation. The learned counsel for the revision petitioner relies on the judgments of this Court in Chandran @ Chandrashekarahan v. State (2016 (5) KHC 650), Surendran and Another v. State of Kerala 2013(3) KHC 780 and the decision in Moothedath Sivadasan v. State of Kerala, 2021 (1) KLT

744 in support of his contentions. Section 50 of the Abkari Act mandates that every investigation into the offence under this Act shall be completed without unnecessary delay. In Chandran's case (Supra) paragraph 12 of the judgment reads as follows:

12. There is also delay in this case in filing the final report before the Court. When there was delay of eight months in conducting the investigation, the Court in *Krishnan H v. State*, 2015(1) KHC 822: 2015(1) KLD 421: 2015(1) KLJ 793: 2015(2) KLT SN 11 held that the long delay in conducting the investigation, in the absence of sufficient explanation, was fatal to the prosecution. In this case, the investigation was practically over on the date of seizure of the contraband itself. The detection was effected on 07/01/2006. The statement of witnesses was recorded on 08/01/2006 and 09/01/2006. Even then, the final report was filed before the Court only on as to why there was delay in completing the investigation and filing the final report. Since there was unexplained delay in this case in completing the investigation and filing the final report, the same is also no doubt fatal to the prosecution as held in *Krishnan* (supra).

In *Surendran's* case (Supra), paragraph 12 reads as follows: 12. Section 50 of the Abkari Act mandates that every investigation of the offence under this Act shall be completed without necessary delay. In this case the occurrence was on CrI.RP No.159 of 2016 5

the Court immediately thereafter. It is seen that the final report was submitted only on 05/10/2000 ie., after a period of one year and nine months. The investigation was completed on receipt of the chemical examiner's report. There is no reason stated nor any explanation offered for not submitting the final report within a reasonable time after receipt of chemical examination report. PW 6 took charge as the Sub Inspector of Police on 01/08/2000, Only thereafter, the final report was submitted on 05/10/2000. It is not known for what purpose the records were kept in the

Police Station without submitting final report in time. In the facts

and circumstances of the case, the conviction entered and sentence passed by the Court below in the proved circumstances cannot be sustained.

In Moothedath Sivadasan case (supra) it was held that unexplained delay in completing the investigation is fatal to the prosecution case. As per Section 50 of the Abkari Act, every investigation into the offences under the Act shall be completed without unnecessary delay. There is no explanation offered for the delay. In the said circumstance, I am of the opinion that the same is fatal to the prosecution.

7. Further contention raised is regarding Ext.P10 inventory list

prepared. Though the occurrence was on 07.02.2009 the inventory list is seen prepared on 23.09.2010 after a delay of almost of 16 months and as regard the custody of the property after the sample was taken, there is no conclusive evidence adduced by the prosecution. Evidence of PW1 would show that the alleged contraband was in his custody and after two months he got transferred and thereafter he has given charge

Crl.RP No.159 of 2016 6 to one T.P.Purushan and that he is not aware as to who has taken steps for taking the inventory. But when PW4 investigating officer was examined, he would deposed that he took charge from one Purushan and the application for preparing the inventory was submitted by PW1 and he denied that it is Purushan, Excise Inspector who has given report for preparation of the inventory. So there is contradiction in the evidence adduced by PW1 and PW4 as regards the preparation of inventory and that the inventory was prepared after a delay of almost 16 months. I find considerable force in the contention of the learned counsel for the revision petitioner that there is no proper evidence regarding the custody of the alleged contraband. The learned counsel would further contend that a perusal of Ext.P10 would reveal that the certification of the inventory is done by the Judicial First Class Magistrate, Nadapuram and that there is procedure violation, going by the decision of this Court in Sathyan v. State of Kerala, 2023 (3) KHC 97 which held that certification of correctness of an inventory prepared under Section 53A(2) of the Abkari Act is an administrative function and should be done by the Executive Magistrate and the certification of inventory by the Judicial Magistrate is not proper. As the certification of the inventory was done by the judicial magistrate, in the light of Sathyans case cited

supra, there is procedural violation in the present case.

8. The above vital aspects were not considered by the courts

Crl.RP No.159 of 2016 7 below while appreciating the evidence and consequently convicting and sentencing the revision petitioner/accused. Therefore, the conviction and sentence imposed by the courts below cannot be sustained. In the result, the revision petition is allowed, setting aside the conviction and sentence passed by the courts below and the revision petitioner/accused is acquitted of the charges levelled against him. The bail bond shall stand cancelled and he is set at liberty. Needless to say, if the revision petitioner/accused has deposited any amount before the trial court pursuant to an order passed by this court or the appellate court, the same shall be refunded to the revision petitioner in accordance with the law. Sd/- VIJU ABRAHAM JUDGE cks

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