

Janu vs State of Kerala

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Court : Kerala

Decided On : Nov-03-2023

Judge : Honourable Mrs. Justice Sophy Thomas

Appeal No. : Crl.Rev.Pet/3098/2010

Appellant : JANU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945
AGAINST THE ORDER/JUDGMENT SC 1048/2006 OF ASSISTANT
SESSIONS COURT/II ADDITIONAL SUB COURT,KOZHIKODE CRA
442/2009 OF ADDITIONAL DISTRICT COURT (ADHOC), KOZHIKODE
REVISION PETITIONER/APPELLANT/ACCUSED: JANU MATTUMMAL
LAKSHAMVEETIL,CHULUR AMSOM, VELLANNUR, DESOM,
KOZHIKODE TALUK. BY ADVS. SRI.R.SUDHISH SRI.M.G.ASHOKAN
SMT.M.MANJU SRI.K.R.RANJITH
RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA
EXCISE INSPECTOR, KUNNAMANGALAM EXCISE RANGE,

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. SRI. RENJITH GEORGE - SR. PP THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 03.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This revision petition is at the instance of the

accused in S.C. No.1048 of 2006 on the file of II nd Additional Assistant Sessions Judge, Kozhikode, assailing the judgment in Cri.Appeal No.442 of 2009 on the file of Additional District and Sessions Judge, Fast Track (Adhoc- I), Kozhikode which upheld her conviction and sentence under Section 8 (2) of the Abkari Act.

2. The prosecution case is that, on 24.05.2003 at

about 1.30 p.m., the revision petitioner was found carrying a black plastic can containing 5 liters of arrack at the Panchayath Road near Dhanalakshmi Match Factory at Vellannur. PW1-Preventive Officer attached to Excise Enforcement and Anti Narcotic squad and party detected the offence while on patrol duty. They seized the contraband, took sample, prepared Ext.P1 mahazar and completed all the legal formalities. The revision petitioner being a lady and since there was no women officials to make her arrest, she was not arrested. The articles seized along with the records were produced before Kunnamangalam Excise range office, and thereafter, before the Judicial First Class Magistrate, Kunnamangalam. PW7 conducted the investigation and laid charge sheet against the revision petitioner under Section 8(2) of the Abkari Act.

3. On appearance of the revision petitioner on

summons, charge was framed under Section 8(2) of the Abkari Act, read over and explained to which she pleaded not guilty. Thereupon, prosecution examined PWs.1 to 7, marked Exts.P1 to P6 and identified MO1. She denied the incriminating materials brought on record in her 313 examination. No defence evidence was adduced.

4. On analyzing the facts and evidence, and on

hearing the rival contentions from either side, the trial court found the revision petitioner/accused guilty under Section 8(2) of the Abkari Act, and sentenced her to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1 lakh, and in default to undergo rigorous imprisonment for three months.

5. Aggrieved by the conviction and sentence,

imposed by the trial court, the revision petitioner preferred CrI. Appeal No.442 of 2009. The appellate court, on reappraisal of the facts and evidence, dismissed the appeal upholding the conviction and sentence imposed by the trial court. So she has preferred this revision petition.

6. Now this Court is called upon to verify the legality, propriety and correctness of the impugned judgments.

7. Heard learned Counsel for the revision petitioner and learned Public Prosecutor.

8. The revision petitioner is assailing the impugned

judgments mainly based on technical grounds. According to her, there is delay in producing the articles seized, before the court. Though the seizure was on 24.05.2003, the articles were seen produced before court only on 26.05.2003. There was a delay of 2 days in producing the articles including the contraband. PW7, the Investigating Officer deposed before court that 25.05.2003 was a holiday and that is why the articles were produced before

the court on the next working day, i.e., on 26.05.2003. But, Ext.P1 seizure mahazar shows that the seizure was at 1.30 pm on 24.05.2003. So sufficient time was there to produce the articles before the magistrate court on the date of seizure itself, and so, the explanation given by PW7 is not satisfactory.

9. In Moothedath Sivadasan v. State of Kerala

(2021 (1) KLT 744), this Court held that the delay in producing the articles seized, before the court, casts serious doubt regarding the seizure of the articles from the

scene of occurrence.

10. Since, the delay in producing the articles before

the court is not properly explained by the prosecution, it is doubtful, whether the sample seized by PW1, was the sample produced before the court, and later, before the chemical examiners laboratory.

11. The next argument is that, there was delay in filing the final report. The occurrence was on 24.05.2003, the sample was sent for chemical analysis and it was received before the laboratory on 11.06.2003. The

chemical analysis report was issued on 19.11.2003. But the witnesses were questioned only in the year 2006 i.e., after 3 years of getting FSL report. The final report was submitted before the magistrate only on 31.05.2006. The delay in investigation and filing the final report is not at all explained by the prosecution.

12. The need for completing investigation in Abkari cases without unnecessary delay is asserted by this Court

in various decisions such as Chandran @ Chandrashekaraharan v. State (2016 (5) KHC 650), Surendran and Another v. State of Kerala (2013 (3) KHC 780), Moothedath Sivadasan v. State of Kerala (2021 (1) KLT 744), and Kumaran P. v. State of Kerala and Another (2016 (5) KHC 632). In the case on hand, though the occurrence was in the year 2003, the witnesses were questioned after 3 years, that too after getting report from the examiner. The final report also was filed after 3 years of the report of the chemical examiner.

13. The forwarding note will not show the date on

which the sample was forwarded to the chemical examiners laboratory. The date was necessary to verify whether the sample was sent to the analyst without delay. In a case like this, especially when the revision petitioner, was not arrested at the scene of occurrence, it was all the more necessary to establish the link evidence in a fool- proof manner. The prosecution was bound to prove that the sample seized from the revision petitioner at the time of occurrence, was the sample which

reached the laboratory for chemical examination. Here, there was delay even in producing the sample before the magistrate court. The date of forwarding that sample to the chemical analyst is not mentioned in the forwarding note. Ext.P6

the chemical analysis report also shows that, the reference letter from the Judicial First Class Magistrate, Kunnankulam, was not bearing any date. The sample bottle reached the lab only on 11.06.2003 as seen from Ext.P6. For all these reasons, we have to hold that the prosecution failed to establish the link evidence that the sample seized from the revision petitioner on 24.05.2003,

was the sample which reached the chemical examiners laboratory for analysis.

14. Learned Counsel for the revision petitioner pointed out that, there is no independent evidence to support the prosecution case as the independent

witnesses turned hostile. Hostility of independent witnesses may not be much relevant in abkari cases, when the evidence adduced by the official witnesses is reliable and trustworthy. But here, there was no arrest at the place of occurrence. So, it was all the more necessary to get support from independent witnesses also regarding the seizure of the contraband from the revision petitioner.

15. The revision petitioner was a lady aged 66 years

at the time of occurrence. Now she is aged 86 years. Apart from considering the technical laches and delay from the part of the prosecution, considering the age of the revision petitioner also, this Court is inclined to allow this revision petition. The impugned judgments are set aside. The revision petitioner is found not guilty of the offence under Section 8(2) of the Abkari Act, and she is acquitted thereunder. Her bail bond is cancelled and she is set at liberty forthwith. The revision petition stands allowed accordingly. Sd/- SOPHY THOMAS JUDGE LU

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