

Radhakrishnan vs State of Kerala

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Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr.Justice Viju Abraham

Appeal No. : Crl.Rev.Pet/3068/2008

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

Crl.R.P.No.3068 of 2008 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE VIJU ABRAHAM
SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA,
1945 CRL.REV.PET NO. 3068 OF 2008 AGAINST THE CONVICTION
AND SENTENCE IMPOSED ON THE PETITIONER IN SC NO.838/2004
ON THE FILE OF PRINCIPAL ASSISTANT SESSIONS COURT,
ALAPPUZHA AND CONFIRMED IN CRIMINAL APPEAL NO.513/2007
OF ADDITIONAL SESSIONS COURT- II, ALAPPUZHA REVISION
PETITIONER/APPELLANT/ACCUSED: RADHAKRISHNAN,
S/O.GOPALAN NAIR, LAKSHMEER, AVAPARAMBUTHEKKU MURI,
CHERUTHANA VILLAGE, KARTHIKAPPALLY. BY ADVS. SRI.BASANT

RESPONDENT/RESPONDENT/COMPLAINANT: STATE OF KERALA PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. OTHER PRESENT:
PP - RENJIT GEORGE THIS CRIMINAL REVISION PETITION HAVING BEEN
FINALLY HEARD ON 30.09.2023, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING: CrI.R.P.No.3068 of 2008 2 VIJU ABRAHAM,J -----
CrI.R.P.No.3068 of 2008 ----- Dated this the 30th day of
September, 2023

ORDER

The revision petitioner is the accused in Crime No.13 of 2002 Karthikappally Excise Range alleging commission of offence punishable under Sections 8(1) and (2) and 55(a) of the Abkari Act.

2. The prosecution case is that, on 21.3.2002 at about 9 am, the accused Nos.1 and 2 had transported illicit spirit having a quantity of 10 litres for the purpose of sale through the Alinchuvadu junction, Sasthamuri public road, Cheruthana Village. The accused thereby committed the aforesaid offences.

3. On the side of the prosecution, PWs.1 to 6 were examined and Exts.P1 to P8 were marked and MO1 was identified.

4. The trial court on consideration of the

evidence adduced found that

charges levelled against him and he was convicted and sentenced to undergo rigorous imprisonment for a period of 2 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of 6 months. Set off was also allowed by the trial court. The 2nd accused was acquitted of the charges levelled against him.

5. Aggrieved by the said conviction and sentence, an appeal was preferred as CrI. Appeal No.513 of 2007 before the Principal Assistant

Sessions Court, Alappuzha. The appeal was dismissed confirming the conviction and sentence passed by the trial court, but the sentence passed by the lower court was modified and the appellant was sentenced to undergo simple imprisonment for a period of one year and maintained the fine imposed by the trial Court. Aggrieved by the same, the present Crl.Revision Petition is filed.

6. Though it is true that the scope of

interference by this court exercising revisional Crl.R.P.No.3068 of 2008 4 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.

7. I have gone through the judgments of the

courts below and also the documents produced in support of the case of the prosecution to prove the guilt of the accused and also heard the Crl.R.P.No.3068 of 2008 5 learned public prosecutor. Ext.P1 is the mahazar produced to prove the seizure of the alleged contraband. It is seen that no specimen seal is seen affixed on Ext.P1 mahazar and further there is no description regarding the seal affixed on the sample bottle. The purpose of putting the specimen seal impression in the seizure mahazar is to give an opportunity to the court to verify the same and satisfy that the seized substances reach the court without any tampering. In this case, no specimen seal is seen affixed in the seizure mahazar. This court in Vijayan v. State of Kerala, 2021 (5) KLT 321, has enumerated the steps to be followed by the officer collecting the sample, the Thondy Clerk who is authorized to receive the thondy and the measures to be ensured by the chemical examiner and held that the specimen seal shall be affixed on the mahazar, sample bottle,

bottle containing the remaining part of the contraband and the forwarding note and further held that while collecting sample the officer shall describe CrI.R.P.No.3068 of 2008 6 the nature of the specimen seal in the mahazar. In Nadarajan v. State of Kerala, 2020 (3) KLT OnLine 1030, it is held that when the specimen seal is not affixed on the seizure mahazar and in the forwarding note, there is no assurance that the very same sample which was allegedly drawn at the spot of occurrence was produced before the court and sent for analysis as per the forwarding note and it has reached the laboratory in a tamper proof condition and tested there. A similar view was taken by this court in Moothedath Sivadasan v. State of Kerala, 2021 (1) KLT 744 and held that

since no specimen impression of s

contraband allegedly seized from the accused has

in fact reached the Chemical E

hand of the chemical examiner in a tamper-proof condition. Relying on the judgment of the Apex Court in State of Rajasthan v. Daulat Ram, AIR 1980 SC 1314, this court in Sasidharns case supra

held that when the sample changed several hands

before reaching the chemical examiner, the prosecution has to necessarily examine the various officials who handled the sample to prove that while in their custody, the seal of the sample has not been tampered with. The Apex Court in Vijay Pandey v. State of U.P., AIR 2019 SC 3569 has

held that mere production of a laboratory report

that the sample tested was the contraband substance cannot be conclusive proof by itself and that the sample seized and one tested are to be correlated. A similar view was taken by this court in Udayan v. State of Kerala, 2023 (1) KLT 371. In view of the lacuna pointed out above, it is to be

held that the prosecution could not establish the

link evidence connecting the accused with the CrI.R.P.No.3068 of 2008 8 contraband seized and the sample analysed in the laboratory and in the said circumstances, the revision petitioner is entitled to the benefit of doubt.

8. Yet another aspect to be considered is the

inordinate unexplained delay in completing

analysis report came on 25.4.2002 and it is seen that the complaint was filed only on 14.9.2004. There is an unexplained delay of more than 2 years and a delay of almost 11 months after the chemical analysis report was obtained. This Court in Chandran @ Chandrashekaraharan 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 has considered the said issue. Section 50 of the Abkari Act mandates that every investigation into

the offence under this Act shall be conducted

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 filed before the Court only on 07/11/2006. No explanation has been given by the prosecution 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 Crl.R.P.No.3068 of 2008 10

necessary delay. In this case the occurrence was on 06/06/1998. Chemical examiner submitted report on 03/12/1998. The final report should have been submitted before the Court immediately thereafter. It is seen that the final report was submitted only on 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 Abkar

the said circumstance, I am of the opinion that the same is fatal to the prosecution.

9. The above vital aspects were not considered by the courts below while appreciating the evidence. In the said circumstance, the conviction and sentence passed by the courts below cannot be sustained. In the result, the above revision petition stand allowed, setting aside the conviction and sentence passed by the courts below against the revision petitioner/1st accused and he is acquitted of the charges levelled against him. The bail bond of the revision petitioner/1st accused shall stand cancelled. He is set at liberty forthwith. sd/- VIJU ABRAHAM, JUDGE
pm

