

Binoy P.B vs State of Kerala

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Court : Kerala

Decided On : Sep-08-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/7212/2023

Appellant : Binoy P.B

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 8TH DAY OF SEPTEMBER 2023 / 17TH BHADRA, 1945
CRL.MC NO. 7212 OF 2023 PETITIONERS/ACCUSED NOS.1 & 2: 1
BINOY P.B AGED 39 YEARS, S/O.P.K.BHASKARAN, PARIYARATHU
HOUSE, PARAMTHODU KARA, CHIRAKKADAVU, CHERUVALLI
VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT., PIN -
686506 2 RAJEEV K.K AGED 52 YEARS, S/O.KARUNAKARAN,
KUMBLANICKAL HOUSE, PADINJATTU BHAGOM, CHIRAKKADAVU
VILLAGE, KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT., PIN -
686506 BY ADVS. NIREESH MATHEW C.C.THOMAS (SR.)(T-48)
RESPONDENT/COMPLANANT - STATE: STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI., PIN - 682031 OTHER PRESENT: VIPIN NARAYAN PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.09.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.7212 of 2023
----- Dated this the 08th day of September,
2023

ORDER

This Criminal Miscellaneous Case is filed by the accused in Crime No.24/2023 of Excise Range Office, Erumeli. The 1 st petitioner was the licensee of all the toddy shops in Group No.V in Erumeli Excise Range, Kottayam Division. The 2nd petitioner is the worker in Toddy Shop No.26 included in the said group. On 01.03.2023 at 2.35 pm, a case is registered against the petitioners on the allegation that the petitioners sold Indian made foreign liquor purchased from the Kerala State Beverages Corporation, which violates the Abkari Act and the Rules. Annexure-A is the certified copy of the crime and occurrence report and Annexure-B is the copy of the mahazar. It is submitted that on the basis of the registration of the case for offence other than under Section 56(b) of the Abkari Act, the license of the 1 st petitioner is suspended and thereafter cancelled. The 1st petitioner filed WP(C). No.15856/2023 challenging the order of suspension and cancellation of the licenses. It is further submitted that this Court was pleased to stay the resale of the toddy shop and posted for hearing.

2. It is the case of the petitioners that the final report

is not filed in Crime No.24/2023 even after 6 months. The case is detected on 01.03.2023. Though the 1st petitioner approached the Excise Inspector several times, it is stated that they are not finalizing the investigation for the reasons best known to him. It is the definite case of the petitioners that even if the entire

allegation are admitted in toto, the offence will lie only under Section 56(b) of the Abkari Act, which is compoundable. The petitioners relies on the judgment of this Court in Thomaskutty Vs. Commissioner of Excise, Tvm & others[2016 KHC 187]. Hence this criminal miscellaneous case.

3. Heard the learned Senior Counsel Sri.C.C.Thomas, as instructed by Adv.Nireesh Mathew, and the learned Public Prosecutor.

4. The Senior Counsel submitted that in the light of

Annexure-D judgment [Thomaskuttys case (supra)], the offences under Sections 55D and 55(i) of the Abkari Act are not attracted. This Court perused Annexure-D judgment, especially paragraphs 40 and 45. It will be better to extract paragraphs 40 and 45 of the above judgment: 40. In the light of the above discussion, I do not hesitate to hold that Section 55 of the Act has no application to the alleged crime the fourth respondent has been charged with.

45. In the light of the above statutory

principles and the judicial dicta, I am of the opinion that for any breach of the licence conditions, which may have been, incidentally, an offence under the other provisions of the Act, the licensee could be made answerable under Section 56 of the Act, but not other provisions-especially penal-of the Act.

5. In the light of the same, I think the offence under

Section 55 is not attracted. A similar view is taken by this Court in W.P.(C). No.27197/2011 and in CrI.M.C. No.4416/2010. In the light of the above order, I am of the considered opinion that the offences under Sections 55D and 55(i) of the Abkari Act in Annexure-A crime and occurrence report are to be set aside. But the respondents can proceed with the investigation as far as the offence under Section 56(b) of the Abkari Act is concerned. The petitioners are also free to compound the same, if permissible as per law. Therefore, this Criminal Miscellaneous Case is disposed of in the following manner:

1. The offences alleged under Sections 55D and

55(i) of the Abkari Act in Annexure-A crime and occurrence report are set aside and the respondents are free to proceed under Section 56(b) of the Abkari Act against the petitioners.

2. I make it clear that the petitioners are free to

compound the offence under Section 56(b) of the Abkari Act, if the same is permissible as per law. sd/- P.V.KUNHIKRISHNAN JV JUDGE APPENDIX OF CRL.MC 7212/2023 PETITIONER ANNEXURES Annexure-A CERTIFIED COPY OF THE CRIME AND OCCURRENCE REPORT IN CR.NO.24/2023 OF EXCISE INSPECTOR, ERUMELI EXCISE RANGE DATED 01.03.2023. Annexure-B CERTIFIED COPY OF THE MAHAZAR DATED 01.03.2023 PREPARED BY THE EXCISE CIRCLE INSPECTOR, PONKUNNAM. Annexure-C TRUE PHOTOCOPY OF THE LETTER DATED 26.08.2023 SENT TO THE EXCISE INSPECTOR, EXCISE RANGE OFFICE, ERUMELI. Annexure-D TRUE PHOTOCOPY OF THE DECISION, THOMASKUTTY VS. COMMISSIONER OF EXCISE, TVM & OTHERS REPORTED IN 2016 KHC 187 .

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