

Ajilal vs State of Kerala Represented by Excise Inspector

Ajilal vs State of Kerala Represented by Excise Inspector

SooperKanoon Citation : sooperkanoon.com/1440421

Court : Kerala

Decided On : Feb-08-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/83/2022

Appellant : Ajilal

Respondent : State of Kerala Represented by Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH TUESDAY, THE 8TH DAY OF FEBRUARY 2022 / 19TH MAGHA, 1943 CRL.MC NO. 83 OF 2022 AGAINST THE ORDER DATED 13.10.2021 IN CMP NO.4547/2019 IN CC NO.1738/2016 OF JUDICIAL FIRST CLASS MAGISTRATE COURT - I, ETTUMANOOR PETITIONERS/ACCUSED NOS.1 TO 3: 1 AJILAL, AGED 50 YEARS, S/O.NARAYANAN, NELLISSERIL HOUSE, VELOOR VILLAGE, VELOOR KARA, KOTTAYAM DISTRICT. 2 SUNIL VIDHADHARAN, S/O.VIDHYDHARAN, MANGALASSERIL HOUSE, MANIYAMPARAMBU KARA, ARPPOOKKARA VILLAGE, KOTTAYAM DISTRICT. 3 BINU V.GEORGE, AGED 43 YEARS, S/O.VARKEY (LATE), VELIYAMALAYIL HOUSE, ATHIRAMPUZHA VILLAGE, KOTTAYAM DISTRICT. BY ADV SRI.NIREESH MATHEW RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA REPRESENTED BY EXCISE INSPECTOR, EXCISE RANGE OFFICE, ETTUMANOOR, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. 2 THE DEPUTY COMMISSIONER OF EXCISE, KOTTAYAM DIVISION, COLLECTORATE (P.O.), KOTTAYAM, PIN - 686 002. BY PUBLIC PROSECUTOR SRI SANAL P RAJ THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08.02.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C.No.83 of 2022 2

ORDER

Dated this the 08th day of February, 2022 This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C') seeking to set aside an order passed by Judicial First Class Magistrate Court-I, Ettumanoor (for short, 'the court below') on 13.10.2021 dismissing CMP No.4547/2019 filed in CC No.1738/2016.

2. It is contended by Sri.Nireesh Mathew, the learned

counsel for the petitioners that CMP No.4547/2019 was filed under Section 67(A) of the Kerala Abkari Act, 1077 (for short, 'the Act') seeking for permission of the court to compound the offence under Section 57(a) of the Act alleged against the petitioners in a case stands registered on its file as C.C No.1738/2016.

3. As the facts revealed, petitioners are accused Nos.1

to 3 in CC No.1738/2016 and in the chemical analysis of the sample of toddy seized from the toddy shop where accused No.1 was a worker and accused Nos.2 and 3 were joint licensees, starch was detected. Thereupon, crime was registered against CrI.M.C.No.83 of 2022 3 the petitioners alleging commission of an offence punishable under Section 57(a) of the Act and concluding the investigation, a Final report chargesheeting them for the offence was also filed. On its basis cognizance was taken and CC No.1738/2016 was registered.

4. The contention of the learned counsel was that by

way of amendment of the Act on 21.12.2017, Section 57(aa) has been introduced into the Act, which makes mixing of starch in the liquor an exclusive offence and starch, as an ingredient was deleted from Section 57(a). According to him, offence under Section 57(aa) is compoundable under Section 67(A) of the Act.

5. In *Excise Commissioner Tvm and Others V. K.*

Sridharan and Others [2021 (2) KHC 99], a Division Bench of this Court has held that amendment under Section 67(A), has retrospective operation. Under Sub-section (2) of Section 67(A), when a case involving an Abkari offence is pending before a court of law, such offence is compoundable with the permission of that court and a report of the action taken shall be filed before the court by the authority empowered to compound the offence. Crl.M.C.No.83 of 2022 4

6. In the application filed by the petitioner, the Deputy

Commissioner of Excise, Kottayam had filed a report stating that the offence under Section 57(a), alleged against the petitioners in CC No. 1738/2016 is a compoundable one with permission of the court as per the direction issued by this Court in its

judgment in Writ Appeal No.2451/2018. The court below has

found the offence under Section 57(a), compoundable one, but permission was declined for the reason that the authority competent to compound the offence has not approached the court for obtaining permission. According to the court, petitioners are not entitled to approach the court seeking for permission. Accordingly, application was dismissed and permission was declined.

7. Though the offence alleged against the petitioners is

one punishable under Section 57(a) of the Act, in view of the amendment of the Act in the year 2017, mixing of starch in the toddy has been made an exclusive offence under Section 57(aa) of the Act. It is an undisputed factum that an offence under Section 57(aa) is compoundable under Section 67(A) of the Act. 67(A) is extracted hereunder for easy reference; [67A. Power to compound offences. - (1)

Excise of the District concerned or any Abkari Officer specially empowered by the Government in this behalf by notification in the Gazette, may accept, from any person reasonably suspected of having committed any of the offences specified in column (1), a sum of money as specified in column (3) of the Table below by way of composition for the offence which may have been committed and where any property has been seized, the same shall be confiscated to Government or disposed of in such manner as may be prescribed:-

Offence Compounding section Compoun in the Act ding fee in rupees

(1) (2) (3)

Transporting of liquor 10 5,000 or intoxicating drug in excess of the quantity prescribed by the Government by notification Possession of liquor or 13 5,000 intoxicating drug in excess of the quantity prescribed Consumption or use of 15A 5,000 liquor by persons under the age of [23 years] Sale of liquor to 15B 5,000 person under the age of [23 years]

Crl.M.C.No.83 of 2022 6 Consumption of liquor 15C 5,000 in public places Taps or causes to be 55(d) 10,000 tapped any toddy producing tree in contravention of the Act, Rules or any

order made under the

Act Draws or causes to be 55(e) 10,000 drawn toddy from any tree in contravention of the Act, Rules or any order made under the Act Misconduct by licensee 56 25,000 etc. Consumption of 56A(2) 5,000 preparations containing, liquor or intoxicating drug other than bonafide medicinal preparations in the business, manufacturing or stocking premises Mixing starch with 57(aa) 25,000] liquor

(2) Where any case involving an offence specified

under subsection (1) is pending before a court of law, such offence may be compounded with the permission of such court and a report of the action taken thereon shall be filed before the court.

(3) On payment of such sum of money or such value or both, as the case may be, to such officer empowered for the purpose under sub-section (1), the accused person, if in custody, shall be discharged. Explanation. - For the purpose of this section, the word compound means compounding of offences.

8. As per Sub-section (2) of Section 67(A) of the Act, when a case involving an offence specified under Sub-Section

(1) is pending before a court of law that offence may be compounded with the permission of the court and a report of action taken shall be filed before the court.

9. Petitioners had filed CMP No.4547/2019 before

Judicial First Class Magistrate Court-I, Ettumanoor seeking for permission to compound the offence alleged as committed by the petitioners. The application was technically incorrect for the reason that permission was sought by the petitioners who are accused in the case on hand for and on behalf of the authority concerned. Therefore, the court below cannot be found fault Crl.M.C.No.83 of 2022 8 with in declining to grant the permission sought stating that the petitioners are incompetent to seek for that, for and on behalf of the authority concerned.

10. True that Sub-section (2) of Section 67A of the Act

provides for compounding of a case pending before a court of law, after obtaining permission of that court. As the averments in the petition reveal, petitioners in the case on hand have already applied for compounding of the offence before the Deputy Commissioner of Excise, Kottayam. In that event, the petitioners ought to have applied for permission of the court to get the offence under Section 57(a) of the Act compounded by the authority concerned. Therefore, the court below

cannot be found fault with and the order under challenge being correct cannot be interfered with.

11. The offence alleged against the petitioners in the case

registered against them being compoundable, the petitioners are granted with liberty to file a fresh application incorporating the prayer for grant of permission to get the offence alleged against them compounded by the 2nd respondent. On such an application being filed by the petitioners, the court below shall pass orders granting permission to them for approaching the 2 nd CrI.M.C.No.83 of 2022 9 respondent and applying for getting the offence allegedly committed by them compounded. With the above observations, this CrI.M.C is disposed of. Sd/- MARY JOSEPH JUDGE MJL CrI.M.C.No.83 of 2022 10 APPENDIX OF CRL.MC 83/2022 PETITIONERS ANNEXURES: ANNEXURE- A: TRUE PHOTOCOPY OF THE REQUEST NIL DATED

SUBMITTED BEFORE THE 2ND RESPONDENT. ANNEXURE- B: TRUE COPY OF THE PETITION, CMP NO.4547/2019 IN C.C.NO.1738/2016 FILED BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT, ETTUMANOOR. ANNEXURE- C: CERTIFIED COPY OF THE ORDER DATED C.C.NO.1738/2016 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT-I, ETTUMANOOR. ANNEXURE- D: TRUE PHOTOCOPY OF THE ORDER DATED PASSED BY THIS HON'BLE COURT. ANNEXURE- E: PHOTOCOPY OF THE ORDER DATED 29/08/2018 IN CRL.RP.NO.668/2018 PASSED BY THIS HON'BLE COURT. ANNEXURE- F: PHOTOCOPY OF THE ORDER DATED 10/03/2021 IN CMP NO.264/2021 IN ST.NO.272/2020 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT, ANGAMALY.

RESPONDENTS ANNEXURES: NIL TRUE COPY PA TO JUDGE

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