

Rajesh Vs. State of Kerala

Rajesh Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/14428

Court : Kerala

Decided On : Dec-01-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Rajesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 1ST DAY OF DECEMBER 2014 10TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2052 of 2014 ()
----- AGAINST THE

ORDER

IN CMP57372014 of J.M.F.C. - II, MAVELIKKARA, DATED 04-11-2014 IN CRIME NO. 109/2014 OF NOORANAD EXCISE RANGE OFFICE , ALAPPUZHA. REVISION PETITIONER(S)/ACCUSED1

----- RAJESH, AGED 39 YEARS, S/O.RAJENDRAN, MANGALATHUTHARAYIL HOUSE, MANJADITHARA MURI, BHARANIKKAVU VILLAGE, MAVELIKKARA TALUK. BY ADV. SRI.NIREESH MATHEW RESPONDENT(S)/COMPLAINANT AND STATE:

----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. N. SURESH THIS CRIMINAL

REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.12.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ss :2: CrI.Rev.Pet.No. 2052 of 2014 APPENDIX PETITIONERS EXHIBITS ANNEXURE-A : COPY OF THE CHEMICAL ANALYSIS CERTIFICATE DATED 04.10.2014 ISSUED BY THE ASST. CHEMICAL EXAMINOR TO GOVT. OF KERALA, THIRUVANANTHAPURAM. ANNEXURE-B : COPY OF THE PETITION DATED 28.10.2014 FILED BEFORE THE JUDL. FIRST CLASS MAGISTRATE COURT-II, MAVELIKKARA. ANNEXURE-C : COPY OF THE

ORDER

DATED 16.11.2010 IN CRL.M.C.NO.4535/2010 PASSED BY THIS HON'BLE COURT. ANNEXURE-D : COPY OF THE

ORDER

DATED 13.02.2012 IN CRL.R.P.NO.345/2012 PASSED BY THIS HON'BLE COURT. ANNEXURE-E : COPY OF THE

ORDER

DATED 19.8.2013 IN CRL.R.P.NO.1571/2013 PASSED BY THIS HON'BLE COURT. RESPONDENTS EXHIBITS : NIL // True Copy // P.A. to Judge ss K. RAMAKRISHNAN, J.

..... CrI. R. P. No.2052 of 2014 . . .
..... Dated this the 1st day of December,
2014

ORDER

The petitioner in C.M.P.No.5737/2014 in CR.No.109/2014 of Nooranadu Excise Range is the revision petitioner herein. The revision petitioner was a licensee arrayed as accused in CR.No.109/2014 of Nooranadu Excise Range, for keeping toddy for sale, which contained starch and saccharine, in violation of the Provisions of Abkari Act and thereby, he along with the vendor had committed the offence punishable under Section 57(a) of Kerala Abkari Act.

2. The Excise officials had inspected the toddy shop No.16 of Nooranad Excise Range on 07.06.2014 and collected two samples of toddy from the toddy shop, kept for sale in the shop and marked the same as sample (A) and (B) as provided under Rule 8(2) of Kerala Abkari Shops Disposal Rules, 2002. Sample (A) was sent for analysis and a report was obtained and sample (B) was produced before CrI. R. P.No.2052 of 2014 2 the court. Revision petitioner filed C.M.P.No.5737/2014 for sending the 2nd sample for analysis to another lab. But the learned magistrate though allowed the application by the impugned order directed, the 2nd sample to be examined by Forensic Science Laboratory, Thiruvananthapuram, which had examined the first sample as well. This order is being challenged by the revision petitioner, by filing the revision before this court.

3. Considering the scope of enquiry and the State is the only respondent, this court felt that, the revision can be admitted and disposed of today itself, after hearing the counsel for the revision petitioner and the learned Public Prosecutor appearing for the respondent.

4. The counsel for the revision petitioner submitted that, no purpose will be served by sending the sample to the same laboratory, from where the first report was obtained and that will really cause prejudice to the accused. Further, various decisions of this court has held CrI. R. P.No.2052 of 2014 3 that, the 2nd sample has to be examined by some other agency, other than the agency which examined the first sample.

5. Learned Public Prosecutor opposed the application on the ground that, there is no provision for sending the 2nd sample itself and the accused had no option to send the 2nd sample to a laboratory to his choice.

6. It is an admitted fact that, on 07.06.2014, Nooranad Excise Officials had conducted inspection in the shop of the revision petitioner, namely T.S.No.16 of Nooranadu Excise Range and collected samples from the toddy kept for sale by taking two samples and numbered the same as (A) and (B), as required under Section 8(2) of the above said rules. It is also an admitted fact that, sample (A) was sent for examination to Chemical Examiners Laboratory, Thiruvananthapuram, to analysis and Annexure-A report was obtained, in which it

was reported that, the presene of starch and saccharine were noted and Crl. R. P.No.2052 of 2014 4 on that basis the above crime was registered and the 2nd sample was also sent to court. The present petitioner who is the licensee of the shop filed the present petition for sending 2nd sample namely, sample (B) to some other laboratory for examination. But the learned magistrate by the impugned order sent the same to the Forensic Science Laboratory, Thiruvananthapuram, of which the Chemical Examiners Laboratory is a part.

7. It is true, there is no provision under Kerala Abkari Shops Disposal Rules, giving a right for the accused to send the 2nd sample for examination. What is provided under Section 8(2) is, only to take two samples and number the same as sample (A) and (B) and sent (A) sample for analysis and after getting the report of analysis and if it is found that, it was not in tune with the license, then a crime can be registered and within 24 hours of receipt of the report and produce the sample (B) before the court, before which the occurrence report will be sent and if no crime is Crl. R. P.No.2052 of 2014 5 registered, then the sample (B) can be destroyed. But by virtue of the decisions of this court in Crl.M.C.No.4535/2010, Crl.R.P.No.345/2012 and Crl.R.P.No.1571/2013, this court had observed that, unless the 2nd sample is sent for analysis, he will not be getting an opportunity to challenge the report of the chemical analysis examination of the first sample and that will affect the right of the party and observed that, that right is available to him and that must be sent to any other laboratory, except the Chemical Analysis Laboratory at Thiruvananthapuram. So under the circumstances and in view of the dictum laid down in the above cases, the order passed by the court below to send the 2nd sample to Forensic Science Laboratory, Thiruvananthapuram, of which the Chemical Examiners Laboratory is a part, for further examination appears to be not correct. So the order to that extent passed by the court below has to be set aside and the magistrate is directed to Crl. R. P.No.2052 of 2014 6 send the 2nd sample to any other laboratory, other than the laboratory in Thiruvananthapuram, and get a report with time bound manner, for the purpose of proceeding with the case. So the revision petition is allowed to that extent. Office is directed to communicate this order to the concerned court, immediately. Sd/- K. RAMAKRISHNAN, (Judge) // True Copy // P.A. to Judge ss