

Rajan vs State of Kerala

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Court : Kerala

Decided On : May-31-2022

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/897/2008

Appellant : RAJAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU TUESDAY, THE 31ST DAY OF MAY 2022 / 10TH JYASHTA, 1944 AGAINST THE ORDER/JUDGMENT IN SC 675/2006 OF ADDITIONAL DISTRICT COURT(ADHOC II), THRISSUR CP 6/2006 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,VADAKKANANCHERRY

APPELLANT/S: RAJAN S/O. VELU, PANTHALAKADU HOUSE, KUMBALANGADU DESAM, WADAKKANANCHERY VILLAGE,, THALAPPILLY TALUK. BY ADV S.RAJEEV RESPONDENT/S: STATE OF KERALA PUBLIC PROSECUTOR, HIGH COURT OF KERALA,, ERNAKULAM (CRIME NO.20 OF 2004 OF WADAKKANANCHERY, EXCISE RANGE. BY ADV PUBLIC PROSECUTOR OTHER PRESENT:

SMT. REKHA.S (SR.P.P) THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 31.05.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

Aggrieved by the judgment dated 05.05.2008 passed by the Additional Sessions Court (Fast Track No.II- Adhoc), Thrissur in Sessions Case No.675/2006, the accused has preferred this appeal. The appellant was convicted under Section 8(2) of the Abkari Act and sentenced to undergo simple imprisonment for a term of four years and pay a fine of Rs.1 Lakh.

2. The prosecution case is that on 03.06.2004 at about 5.30 p.m. the accused was found in possession of 5 litres of arrack at Kumbalangad, Vadakkanchery, in violation of the provisions of the Abkari Act.

3. After completing the investigation, final report

was submitted against the accused for the offence punishable under Section 8(2) of the Abkari Act before the jurisdictional Magistrate. The case was committed to the Sessions Court from where it was made over to the trial Court. On the appearance of the accused charge ..3.. was framed against him for the offence punishable under Section 8(2) of the Abkari Act. The accused pleaded not guilty to the charge and therefore, he came to be tried by the trial Court for the aforesaid offence.

4. The prosecution examined PWs 1 to 7 and proved Exts. P1 to P14 and MO1.

5. After the closure of the evidence on behalf of

the prosecution, the statement of the accused under Section 313 Cr.P.C. was recorded. He pleaded innocence. The trial Court heard the matter under Section 232 Cr.P.C. and found evidence against the accused and hence he was called upon to enter on his defence and adduce evidence, if any, he may have in support thereof. The trial Court, after hearing the arguments addressed on both sides found the accused guilty of the offence under Section 8(2) of the Abkari Act and

convicted him thereunder.

6. Heard Sri. S.Rajeev, the learned counsel appearing for the appellant/accused and Smt. Rekha S., ..4.. the learned Senior Public Prosecutor appearing for the respondent.

7. The learned counsel for the appellant contended that the prosecution failed to establish that the contraband substance allegedly recovered from the place of occurrence eventually reached the Chemical Examiners Laboratory.

8. The learned counsel for the appellant relied on the following circumstances to substantiate his contentions:-

(i) Ext.P2 seizure mahazar does not contain the nature and specification of the seal stated to have been affixed on the bottle containing the sample.

(ii) The various officials who handled the sample during its transit from the Court to the laboratory were not examined.

(iii) The delay in the analysis of the sample has not been satisfactorily explained by the ..5.. prosecution.

9. Ext.P2 seizure mahazar does not contain the

nature and description of the seal stated to have been affixed by the officer who detected the offence to ensure the genuineness of the contraband substance produced before the Court. The detecting officer has not given evidence as to the nature and description of the seal used.

10. The detecting officer, who has drawn the

sample, has to give evidence as to the nature of the seal affixed on the bottle containing the sample. The nature of the seal used shall be mentioned in the seizure mahazar. The specimen of the seal shall be produced in the Court. The specimen of the seal shall be provided in the seizure mahazar and also in the forwarding note so as to enable the Court to satisfy the genuineness of the sample produced in the Court {[Vide Bhaskaran K. v. State of Kerala and another [2020

KHC 5296], Achuthan v. State of Kerala [2016(1) KLD 391], Krishnadas v.

..6.. State of Kerala [2019 KHC 191]}.

11. The bottle containing the sample reached the Court on 04.06.2004. It remained in the custody of the

Property Clerk of the Court. The date on which the sample was forwarded to the Chemical Examiners Laboratory is not available in the materials produced before the Court. The prosecution has not adduced any evidence as to the name of the official with whom the sample was forwarded to the Chemical Examiners Laboratory. Ext.P11 forwarding note is silent as to the official who received the sample from the Court and the date on which it was forwarded to the Chemical Examiners Laboratory. Ext.P13 Certificate of Chemical Analysis shows that the sample was delivered to the laboratory on 11.06.2004 through an Excise Guard by name M.S. Sudheerkumar. The available materials show that the sample changed several hands. The sample remained in the custody of the officer of the Court who received the same, the Excise official concerned who ..7.. received the same from the Court and the Excise official who delivered the same to the laboratory. None of these officials were examined by the prosecution to establish the tamper-proof despatch of the sample from the Court to the laboratory. The inevitable consequence of this omission is that the prosecution failed to rule out the possibility of the sample being changed or tampered with during the period in which it remained in the hands of the officials concerned. This view is supported by the decision of the Apex Court in State of Rajasthan v. Daulat Ram [AIR 1980 SC 1314].

12. Though the sample reached the laboratory on 11.06.2004, it was subjected to analysis only on 03.08.2005. The prosecution has not offered any explanation as to the delay in the analysis of the sample.

In Krishnadas v. State of Kerala [2019 KHC 191] held

thus:- 6. Ext.P5 report of analysis shows that the sample was received at the laboratory only on 19.9.2003. The ..8..

detection in this case was made on 26.06.2003. The report of analysis shows that the analysis was made in October, 2004. The report refers to a letter dated 23.7.2003 from the court of the learned Magistrate, Chittur, and the sample was taken to the laboratory by one Excise Guard, Rajeev. Though the sample was sent from the Court as early as on 23/07/2003, it reached the laboratory only in September, 2003. There is no explanation for this delay. Though the sample reached the laboratory in September, 2003, it was analysed only in October, 2004. For this delay of one year also, there is no explanation. These are all suspicious aspects, the benefit of which must go to the accused.

13. In the instant case, the delay of more than one year in analysing the sample has not been explained by the prosecution.

14. The prosecution has therefore not established that the contraband allegedly seized from the place of occurrence was subjected to analysis in the Chemical Examiners Laboratory. Hence, Ext.P13 Certificate of Chemical Analysis has no evidentiary value.

15. In *Vijay Pandey v. State of U.P* (AIR 2019 SC 3569), the Apex Court held that mere production of a ..9..

laboratory report that the sample tested was the contraband substance cannot be conclusive proof by itself. The sample seized and that tested have to be co-related.

16. It is settled that the prosecution in a case of this nature can succeed only if it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample which was drawn

from the bulk quantity of the alleged contraband substance said to have been seized from the possession of the accused. In the instant case, the prosecution was unable to establish the link connecting the accused with the contraband seized and the sample analysed in the laboratory. The accused is entitled to the benefit of doubt arising from the absence of link evidence as discussed above.

17. The upshot of the above discussion is that the conviction entered by the Court below overlooking these vital aspects of the matter cannot therefore be sustained. ..10.. The appellant/accused is therefore found not guilty of the offence punishable under Section 8(2) of the Abkari Act. In the result,

(i) the Appeal is allowed ;

(ii) The judgment of conviction and sentence passed against the accused is set aside ;

(iii) The accused is acquitted of the offence under Section 8(2) of the Abkari Act.

(iv) He is set at liberty ;

(v) Any amount deposited by the accused as per the interim orders of this Court shall be disbursed to him as per law. Sd/- K. BABU, JUDGE kkj

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