

Santha vs State of Kerala

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Court : Kerala

Decided On : Feb-28-2022

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : CRL.A/1771/2006

Appellant : Santha

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
MONDAY, THE 28TH DAY OF FEBRUARY 2022 / 9TH PHALGUNA,
1943 CRL.A NO. 1771 OF 2006 AGAINST THE ORDER/JUDGMENT IN
SC 1480/2001 OF ADDITIONAL SESSIONS JUDGE, FAST TRACK
COURT (ADHOC)NO.IV, THIRUVANANTHAPURAM CP 55/2001 OF
COURT JUDICIAL MAGISTRATE OF FIRST CLASS-I,NEDUMANGAD
APPELLANT/ACCUSED: SANTHA D/O.CHELLAMMA, KURUVIKKADU
VEEDU, PALAIKONAM, PAZAYATHERUVU MURI, ARYANAD
VILLAGE. BY ADVS. SRI.T.A.UNNIKRISHNAN SRI.K.SATHEESH
KUMAR RESPONDENT/S: STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY

ADV. RANJITH GEORGE, PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR HEARING ON 28.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
CRL.A.No.1771 of 2006 2

ORDER

The appellant is the accused in S.C.No.1480/2001 on the file of the Additional Sessions Court, Fast Track (Adhoc)-IV, Thiruvananthapuram. The appellant was charge sheeted for the offences punishable under Sections 8(1) and (2) of the Kerala Abkari Act.

2. The prosecution case is that, on 29.1.2001, the Sub Inspector of Police, Aryanad Police Station got reliable information that the accused is selling illicit arrack at the place Palaikonam. When he went to the residence of the appellant/accused at 5 p.m., she was found holding a plastic can and a glass. Upon examination, it was found that, the plastic can which the

appellant was holding, contained 9 litres of illicit arrack. Immediately, the appellant was arrested with the assistance of a woman police constable and the plastic can, along with contraband article as well as the glass, were seized by preparing seizure mahazar in the presence of independent witnesses.

3. Thereafter, the appellant as well as the articles recovered, were produced before the Judicial First Class Magistrate Court-1, Nedumangad. On the basis CRL.A.No.1771 of 2006 3 of the same, Crime No.31/2001 was registered by Aryanad Police and upon completing the investigation, final report was submitted before the Judicial First Class Magistrate Court-I, Nedumangad where it was taken into file as C.P.No.55/2001. Upon completing the legal formalities, the matter was committed to Sessions Court,

Thiruvananthapuram and later it was m
S.C.No.1480/2001.

4. In support of the prosecution case, PWs.1 to 7

were examined, Exhibits P1 to P9 were marked and MO1 was identified. After completing the prosecution case, the appellant was examined under Section 313 of the Code of Criminal Procedure (Cr.PC) and the incriminating materials brought out during the course of trial were put to her which she denied and pleaded innocence. No defence evidence was adduced.

5. After examining the materials produced by the prosecution, the learned Sessions Judge arrived at the

conclusion that, the appellant is guilty of the offences

and accordingly she was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine CRL.A.No.1771 of 2006 4 of Rs.1,00,000/- with a default sentence to undergo rigorous imprisonment for a further period of six months. This Crl.Appeal is filed by the accused, challenging the aforesaid order of conviction and sentence.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor

7. The main contention put forward by the learned

counsel for the appellant is that, Exhibit P1 seizure mahazar does not contain the details of the sampling of the articles. It is also pointed out that, Ext.P1 mahazar does not contain the description of seals claimed to have been affixed on the articles seized at the time of inspection. It is further pointed out that Ext.P8 forwarding note also does not contain the specimen seal affixed on it. In such circumstances, it was pointed out that, the prosecution failed to relate the articles allegedly seized from the possession of the appellant

with the articles which were subjected

interfered with, contends the counsel. CRL.A.No.1771 of 2006 5

8. The learned Public Prosecutor opposes the aforesaid contentions and points out that, the materials

available on record are sufficient to arrive at the finding of guilt on the part of the appellant. In such circumstances, he prays for dismissal of the Crl.Appeal.

9. When we examine the materials relied on by the

prosecution, it can be seen that, all the independent witnesses who are PW1 to PW3 have turned hostile to the prosecution. Except PW3, all the other witnesses even denied their signature in the mahazar. The other evidence relied on by the prosecution are the depositions of PW4 to PW7 who are official witnesses. PW4 is the woman police constable under whose assistance the arrest of the appellant was made. PW5 is the Head Constable who accompanied PW6, the detecting officer, who registered the F.I.R. and conducted the investigation in this case

for some time.

Crime was registered by PW6 on the basis of

completing the investigation.

10. It is a well settled position of law that in

order to establish the guilt of the appellant for the

offences under the provisions mentioned above, the

CRL.A.No.1771 of 2006 6 prosecution has to establish that the sample which was sent for chemical analysis was the very sample which was actually drawn from the contraband articles seized from the possession of the appellant. The above aspect was explained in the judgment rendered by the Honble Supreme Court in Vijay Pandey v. State of Uttarpradesh [AIR 2019 SC 3569]. In Moothedath Sivadasan and Another v. State of Kerala [2021 KHC 3232] this Court observed that, lack of specimen seal in the mahazar or the description of the

seal being mentioned therein, is very fatal to the prosecution. In this case when we examine Ext.P1, it can be seen that, the same does not contain the seal nor it mentions about the description of the seals affixed on the articles. In the light of the principles laid down by this Court in the above decision, the aforesaid omission is very crucial.

11. Another aspect relevant to note is that, as rightly pointed out by the learned counsel for the appellant, nothing is mentioned as to the manner of taking of sample, when the mahazar was prepared. Exhibit P1 mahazar does not contain anything indicating the sampling done when the articles were seized. Since the aforesaid aspects are very crucial, the non mentioning of the same is fatal to CRL.A.No.1771 of 2006 7 the prosecution case which creates a shadow of doubt on the prosecution case.

12. Yet another illegality pointed out by the

learned counsel for the appellant is the lack of seal in the forwarding note. The forwarding note is a crucial document by which the sample drawn from the contraband article is forwarded for chemical analysis. Unless the seal imposed upon the sample is specifically affixed on the forwarding note, it cannot be concluded that, the sample which was forwarded to the chemical analysis is

the same sample which was drawn from the contraband articles seized from the appellant. The above aspect is explained in the judgment of this Court in in Ravi v.

State-S.I. of Police, Meppadi [2018(5) KH

(supra) is extracted hereunder:

"8. This court has settled that the copy of the forwarding note produced in court by the Detecting officer or the Investigating Officer must be proved in evidence, and it must contain the specimen of the seal affixed on the sample. Ext.P8 forwarding note does not contain the specimen of the seal affixed on the sample. This means that there is nothing to identify the sample collected from the possession of the accused. It is not known from which plastic can, the four samples relating to the chemical report were

CRL.A.No.1771 of 2006 8 collected. Thus, on all material aspects, the whole prosecution case is doubtful, and there is no clear and satisfactory material to prove the offence alleged."

In order to establish the prosecution case regarding examination of sample, the prosecution has to prove each and every sequence of events right from the seizure of the contraband article till it reaches at the hands of the Analyst for examination of the same. In the absence of any evidence linking the aforesaid sample which was

subjected to chemical examination, with the articles seized from the possession of the appellant, it cannot be concluded that, the prosecution has established the guilt of the accused.

13. In such circumstances, the only conclusion

possible is that the prosecution failed to establish the guilt of the accused. This would only lead to a finding that the order of finding the appellant guilty by the Sessions Court is to be interfered with. In the result, this appeal is allowed, the order of conviction and consequential sentence imposed upon the appellant by the Additional Sessions Court, Fast Track

Court (Adhoc)No.IV, Thiruvananthapuram as per judgment

dated 1.8.2006 in S.C.No.1480/2001 are hereby set aside. CRL.A.No.1771 of 2006 9 The appellant is found not guilty and acquitted of all charges. Sd/- ZIYAD RAHMAN A.A. JUDGE pkk

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