

Bhuvanendran vs State of Kerala

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Court : Kerala

Decided On : Feb-26-2021

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : CRL.A/1183/2006

Appellant : Bhuvanendran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS FRIDAY, THE 26TH DAY OF FEBRUARY 2021 / 7TH PHALGUNA, 1942 CRL.A.No.1183 OF 2006 AGAINST THE JUDGMENT IN SC 461/2001 DATED 19-05-2006 OF ADDITIONAL DISTRICT & SESSIONS COURT (FAST TRACK COURT-I), THIRUVANANTHAPURAM AGAINST CP 210/2000 OF JUDICIAL MAGISTRATE OF FIRST CLASS-I,ATTINGAL APPELLANT/ACCUSED: BHUVANENDRAN S/O.CHELLAPPAN PILLAI, BLOCK NO.11, JAWAHAR COLONY, ANADU MURI, PERINGAMALA VILLAGE. BY ADVS. SRI.T.A.UNNIKRISHNAN SRI.K.SATHEESH KUMAR RESPONDENT/COMPLAINANT: STATE OF KERALA REP. BY THE

PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
SMT. MAYA M.N., PUBLIC PROSECUTOR THIS CRIMINAL APPEAL
HAVING BEEN FINALLY HEARD ON 26.02.2021, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: Crl.Appeal
No.1183/06 -:2:-

JUDGMENT

Dated this the 26th day of February, 2021 Appellant challenges the conviction and sentence imposed on him by

judgment dated 19.5.2006 in S.C. No.461 of 2001 on the files of the

Sessions Judge, Fast Track-I, Thiruvananthapuram. By the impugned judgment, the accused was found guilty under Section 55(a) of the Abkari Act and was sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,00,000/-, in default of payment of pay fine to undergo rigorous imprisonment for one year.

2. The prosecution case was that on 20.2.1999, the accused was

found in possession of 150 litres of arrack in six plastic cans kept by him for the purpose of sale in the rubber estate of one Shamsudeen. The crime was detected by PW6, who was then an Assistant Sub Inspector of Police, and registered Ext.P3 FIR and thereafter PW5 conducted the investigation and filed the final report. The prosecution examined PW1 to PW6 and marked Ext.P1 to Ext.P4, apart from the material objects MO1 series. The learned Sessions Judge, after appreciating the evidence adduced, found the accused guilty and sentenced him to imprisonment and fine as mentioned earlier.

3. I have heard Sri.Akhil K.K., learned counsel for the appellant as Crl.Appeal No.1183/06 -:3:- well as Smt.Maya M.N., learned Public Prosecutor for the State.

4. The solitary point raised by the learned counsel for the appellant is

that the crime was detected, accused was arrested and crime was registered by a person who was not authorized under the Abkari Act. Inviting my attention to the evidence of PW6, it was submitted that PW6 was only an Assistant Sub Inspector of Police who was not authorized to detect arrest or register a crime.

5. On a perusal of the deposition of PW6, it is seen that even though

at the time of deposition he was the Sub Inspector of Police, on 20.2.1999, he was an Assistant Sub Inspector of Police. As held repeatedly by this Court in various decisions, an Assistant Sub Inspector of Police is not an authorised officer in 1999 under the Abkari Act. In the circumstances of the case, the very edifice of the prosecution case falls to ground since the crime was detected, accused was arrested and crime was registered by a

person who was not authorised under the Abkari Act. Only a person specifically authorised is entitled to detect or arrest or register a crime. In the said circumstances, since the very genesis of the prosecution case is faulty, the accused is entitled to be acquitted.

6. Accordingly, the conviction and sentence imposed on the accused in S.C. No.461 of 2001 on the files of the Sessions Judge, Fast Track-I, Crl.Appeal No.1183/06 :-4:-

Thiruvananthapuram, is hereby set aside and the appellant is acquitted. The bail bonds, if any, executed shall stand cancelled and the fine amount, if any, remitted shall be refunded forthwith. The appeal is allowed as above. Sd/- BECHU KURIAN THOMAS JUDGE vps /True Copy/ PS to Judge

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