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Krishnankutty vs State of Kerala

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Court : Kerala

Decided On : Mar-09-2021

Judge : Honourable Mr. Justice B.Sudheendra Kumar

Appeal No. : CRL.A/1798/2006

Appellant : Krishnankutty

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR TUESDAY, THE 09TH DAY OF MARCH 2021 / 18TH PHALGUNA, 1942 AGAINST THE ORDER/JUDGMENT IN SC 596/2004 OF ADDITIONAL DISTRICT COURT (ADHOC), ALAPPUZHA AGAINST THE ORDER/JUDGMENT IN CP 115/2003 OF JUDICIAL MAGISTRATE OF FIRST CLASS , KAYAMKULAM PETITIONER/ACCUSED: KRISHNANKUTTY S/O KOCHUKUNJU,KANJIRAPPALLY KIZHAKKATHIL, ELIPPAKKULAM MURI,, BHARANIKKAVU VILLAGE, MAVELIKKARA,, ALLEPPEY DIST. BY ADVS. SRI.R.GOPAN SRI.BASANT BALAJI RESPONDENT/S/COMPLAINANT: 1 STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM. 2 THE EXCISE INSPECTOR MAVELIKKARA EXCISE RANGE. SMT. M. K. PUSHPALATHA,SR.PP, SMT. GRANCY JOSE, AMICUS CURIAE. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was convicted and sentenced by the court below under Section 55(g) of the Abkari Act.

2. The prosecution allegation is that on 19.06.2003 at about 1.10 p.m., the appellant was found in possession of 20 litres of wash for the purpose of manufacturing arrack in contravention of the provisions of the Abkari Act.

3. Since there is no representation for the appellant, this court has appointed Adv. Grancy Jose . A as Amicus Curiae to argue the case for the appellant.

4. Heard the learned Amicus Curiae and the learned senior Public Prosecutor.

5. The learned Amicus Curiae has argued that since no forwarding note was produced or marked in this case, the appellant is entitled to be acquitted.

6. It appears that no forwarding note was produced or marked in this case.

7. In Sasidharan v. State of Kerala [2007 (1) KLT 720], the Court observed thus:

> Without the link evidence of actual sampling by the concerned clerk of the court by drawing sample from the can and sending the same in a sealed packet to the Chemical Examiner with a specimen seal sent separately for tamper proof despatch, the Prosecution cannot be held to have brought home the offence against the appellant.

8. In Ravi v. State of Kerala [2011 (3) KLT 353], the

Division Bench of this Court held that the prosecution in a case under the Abkari Act could succeed only if it is shown that the contraband liquor which was allegedly seized from the accused ultimately reached the hands of the chemical examiner by change of hands in a tamper-proof condition.

9. Since no forwarding note was produced

and marked in this case, the prosecution could not establish the tamper-proof despatch of the sample to the laboratory. Therefore, there is no satisfactory link evidence to show that it was the same sample which was drawn from the contraband seized from the appellant which eventually reached the hands of the Chemical examiner by change of hands in a tamper-proof condition. In the said

circumstances, there is no link evidence to connect the appellant with the sample analysed in the laboratory. Consequently, the conviction and sentence passed by the court below relying on Ext.P4 certificate of chemical analysis cannot be sustained. In the result, this Criminal Appeal stands allowed, setting aside the conviction and sentence passed by the court below and the appellant stands acquitted. The bail bond of the appellant stands discharged. Sd/- SUDHEENDRA KUMAR JUDGE RK/09.03.2021

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