

Jose @ Joseph vs State of Kerala

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Court : Kerala

Decided On : Aug-31-2021

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : CRL.A/1988/2006

Appellant : Jose @ Joseph

Respondent : State of Kerala

Judgement :

Crl.A.No.1988/2006 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943
CRL.A NO. 1988 OF 2006 AGAINST THE ORDER/JUDGMENT IN SC
296/2005 OF ADDITIONAL SESSIONS COURT (ADHOC)III, MANJERI,
MALAPPURAM

APPELLANT/ACCUSED: JOSE @ JOSEPH AGED 46 YEARS
S/O.OUSEPH, PULIKKAL VEETIL,, KODUNGALLUR AMSOM,
KOTTAPPURAM DESOM,, THRISSUR DISTRICT. BY ADV
SRI.P.SAMSUDIN RESPONDENT/COMPLAINANT: STATE OF

KERALA REPRESENTED BY THE EXCISE RANGE OFFICER MANJERI,, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. OTHER PRESENT: BY SRI. RANJITH GEORGE (PP) THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 31.08.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CrI.A.No.1988/2006 2

JUDGMENT

This appeal is filed challenging the conviction and sentence imposed on the appellant/accused in S.C.No.296/2005 on the file of the Additional Sessions Court (Adhoc)-III, Manjeri.

2. The gist of the prosecution case is that the appellant/accused was

found manufacturing illicit arrack in a house situated in Ward No.IV of Urangattiri Panchayat. The accused was arrested and 15 litres of wash and 700 ml of arrack together with aluminium vessels and other materials were recovered. The incident is alleged to have occurred on 29.8.2002. Following investigation of the case, a final report was filed before the Judicial First Class Magistrate Court-I, Manjeri and was made over to the Sessions Court for trial. On a charge being framed against the appellant/accused under Sections 55(b) and 8(1) of the Abkari Act, the appellant/accused pleaded not guilty. Following trial, the appellant/accused was convicted and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.1 lakh, in default of payment of fine, simple imprisonment for further six months was ordered. The period of remand undergone by the appellant/accused was allowed set off in accordance with law.

3. Sri. P. Samsudin, the learned counsel appearing for the appellant contends that, apart from contentions on merit, this appeal is liable to be allowed and the appellant/accused acquitted on the short ground that the final

CrI.A.No.1988/2006 3 report in the case was filed before the Judicial First Class Magistrate Court-I, Manjeri only on 16.8.2005, though the incident is alleged to have taken place on 22.8.2002 and though the chemical analysis report was

received by the prosecution on 19.2.2003. The learned counsel would submit, with reference to the judgments of this Court in Chandran v. State; 2016(4)KLT 727 and Krishnan. H. v. State; 2015 (1) KHC 822; that long and inordinate delay in filing the final report itself is a ground to acquit the accused. Section 50(1) of the Abkari Act also requires that an investigation into abkari offences to be completed without any delay. It is clear that, though the incident is alleged to have happened on 29.8.2002 and though the accused was arrested on the same day and though the chemical analysis report was received by the prosecution on

19.2.2003, the final report was filed before the Court on 16.8.2005. This constitutes inordinate delay in filing the final report which, remains unexplained. Going by the law laid down in the aforesaid judgments of this Court, the appellant/accused is entitled to be acquitted. In the result, this appeal is allowed. The conviction and sentence imposed on the appellant/accused in S.C.No.296/2005 on the file of the Additional Sessions Court (Adhoc)-III, Manjeri is set aside and the appellant/accused will stand acquitted. sd/- GOPINATH P. JUDGE acd

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