

Mohanan vs State of Kerala

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Court : Kerala

Decided On : Mar-24-2021

Judge : Honourable Mr. Justice B.Sudheendra Kumar

Appeal No. : CRL.A/113/2012

Appellant : Mohanan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR WEDNESDAY, THE 24TH DAY OF MARCH 2021 / 3RD CHAITHRA, 1943 AGAINST THE ORDER/JUDGMENT IN SC 355/2009 DATED 21-12-2011 OF ADDITIONAL DISTRICT COURT (ADHOC)III, PATHANAMTHITTA APPELLANT/S/1st ACCUSED: MOHANAN S/O.KAMALASANAN, PALAKKOTTUPUTHEN VEEDU, MELOODU, PERINGANADU VILLAGE, ADOOR TALUK, PATHANAMTHITTA DISTRICT. BY ADV. SRI.K.N.RADHAKRISHNAN(THIRUVALLA) SRI.ARUN BOSE, AMICUS CURIAE. RESPONDENT/S/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF

KERALA. SMT. M. K. PUSHPALATHA, SR.PP, THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24.03.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellant was convicted and sentenced by the court below under Section 8(2) of the Abkari Act.

2. The prosecution allegation is that on

01.07.2004 at about 6.30 p.m., the appellant was found in possession of 1.750 litres of arrack and the other accused was found in possession of 4 litres of rectified spirit in contravention of the provisions of the Abkari Act.

3. Since there is no representation for the appellant, this Court has appointed Adv. Arun Bose 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 samples to the laboratory. Therefore, there is no satisfactory link evidence to show that the same samples which were 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. Consequently, there is no link evidence to connect the appellant with the samples analysed in the laboratory. In the said circumstances, 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. Needless to state that if the appellant had already deposited any amount before the trial court pursuant to the direction of this Court, the appellant is entitled to reimbursement of the said amount from the court concerned. SD/- B.SUDHEENDRA KUMAR JUDGE RK/24.03.2021

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