

Ani vs State of Kerala

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Court : Kerala

Decided On : Oct-12-2021

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/4100/2021

Appellant : ANI

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH TUESDAY, THE 12TH DAY OF OCTOBER 2021 / 20TH ASWINA, 1943 CRL.MC NO. 4100 OF 2021 AGAINST CC NO.615/2020 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT (E O),ERNAKULAM. CRIME NO.21/2020 OF ERNAKULAM EXCISE RANGE. PETITIONERS/ACCUSED NOS. 1 & 2: 1 ANI, AGED 52 YEARS, S/O. BHASKARAN, THENGATHARA HOUSE, CHERAI KARA, PALLIPPURAM VILLAGE, KOCHI TALUK, ERNAKULAM DISTRICT. 2 KISHOREKUMAR, AGED 55 YEARS, S/O. RAMAN, KALATHIL HOUSE, KALOOR THRIKOOR DESOM, MUKUNDAPURAM TALUK, THRISSUR DISTRICT BY ADV NIREESH MATHEW RESPONDENTS/COMPLAINANT: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM 682 031 2 THE DEPUTY COMMISSIONER OF EXCISE, OFFICE OF THE DEPUTY COMMISSIONER OF EXCISE, KACHERIPADY, ERNAKULAM, COHIN 682 018 PP SRI M.P.PRASANTH THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12.10.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.M.C No.4100/2021 2 C.R.

ORDER

Dated this the 12th day of October, 2021 This petition is filed by accused Nos.1 and 2 in C.C No.615/2020, pending on the files of Additional Chief Judicial Magistrate Court (Economic Offences), Ernakulam.

2. The case of the prosecution was that sample of

toddy was taken from toddy shop No.3 and was found to contain starch and for the violations Annexure-C final report was filed chargesheeting the petitioner for offences punishable under Sections 57(aa) and 56(b) of the Abkari Act (for short, the Act).

3. The grievance of the petitioners was that Section

57(aa) was introduced into the Act in the year 2018 and prior to the introduction only a general provision as 56(b) was available and punishment for violation of conditions of licence or permit was provided for thereunder. According to the learned counsel, with the introduction of Section CrI.M.C No.4100/2021 3 57(aa) in the year 2018, adding of starch into the toddy in particular was made an offence and the punishment for that was also provided thereunder.

4. It is submitted by Sri.Nireesh Mathew, the

learned counsel that when a particular provision providing for violations of conditions of licence or permit and its punishment is introduced later, the petitioner cannot be made liable under the general provision providing for those which was there originally. According to him,

therefore, there is every reason to quash Annexure-C final report to the extent it incorporates an offence under Section 56(b) of the Act also therein.

5. Section 56(b) of the Act is extracted hereunder; 56) xxx

(b) Wilfully does or omits to do anything in breach of any of the conditions of his license or permit not otherwise provided for in this Act; (Emphasis supplied) The words emphasised as above make it clear that when the alleged acts are not otherwise made an offence Crl.M.C No.4100/2021 4 under the Act alone the person responsible for it can be made liable under the general provision available.

6. It is undoubtedly clear from the words emphasised

that for chargesheeting a person for an offence punishable under sub-section (b) of Section 56, and be imposed with punishment thereunder, there must not be a provision providing for punishment separately. It is pertinent to note that Section 57(aa) has been introduced into the Act in the year 2018, which indisputably is a special provision to punish a person, guilty for adding starch into toddy, which is out of purview of the terms of licence or permit issued in his favour.

7. The petitioners having been chargesheeted for

strict disobedience to the terms of licence or permit issued in their favour are liable to be punished under the specific provision of Section 57(aa). When a chargesheet alleging commission of an offence under Section 57(aa) is there, the prosecution is highly unjustified in incorporating the offence under Section 56(b) also in the chargesheet (Final

Crl.M.C No.4100/2021 5 Report). The investigating agency fails to take note of the words explicitly makes provision in the Act itself for its exclusion. Crl.M.C succeeds for the reason and is allowed in part. Annexure C Final Report is quashed to the extent it chargesheets the petitioners for an offence under Section 56(b) of the Act.

Sd/- MARY JOSEPH JUDGE JJ CrI.M.C No.4100/2021 6 APPENDIX OF CRL.MC 4100/2021 PETITIONERS ANNEXURE Annexure A PHOTOCOPY OF THE ORDER DATED 05.05.2021 IN CMP NO.1108/2021 IN CC.NO.615/2020 PASSED BY THE ADDL. CHIEF JUDL.MAGISTRATE COURT.(E.O), ERNAKULAM. Annexure B TRUE PHOTOCOPY OF THE REQUEST DATED 27/04/2021 SUBMITTED TO THE 2ND RESPONDENT THROUGH C.I.OF EXCISE, ERNAKULAM. Annexure C PHOTOCOPY OF THE FINAL REPORT IN CR.NO.21/2020 OF ERNAKULAM EXCISE RANGE. RESPONDENTS ANNEXURES : NIL //TRUE COPY// PA (GR.II TO JUDGE)

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