

Koran vs State of Kerala

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Court : Kerala

Decided On : Sep-23-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : CRL.A/663/2005

Appellant : KORAN

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2020 / 1ST ASWINA,
1942 CRL.A.No.663 OF 2005 AGAINST THE ORDER/JUDGMENT IN
SC 404/2003 DATED 21-03-2005 OF THE ADDITIONAL DISTRICT &
SESSIONS COURT, FAST TRACK COURT NO.1 (ADHOC), MANJERI
APPELLANT/ACCUSED: KORAN S/O. KUPPARAN, KOTTAMTHALA
DESOM, ULLANAM,, TIRURANGADI TALUK, PARAPANANGADI,
MALAPPURAM DISTRICT. BY ADVS. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,, HIGH COURT OF KERALA, ERNAKULAM. BY

SMT.MAYA.M.N. GP THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-09-2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.APPEAL NO.663 OF 2005 2

JUDGMENT

Dated this the 23rd day of September 2020 ... The appellant is the accused in S.C. No.404 of 2003 on the file of the Additional District & Sessions Court, Fast Track Court No.1 (Adhoc), Manjeri. The above case is charge sheeted by the Excise Circle Inspector, Tirur alleging offences punishable under Sections 55(a)&(g) of the Abkari Act.

2. The prosecution case is that, on 14.8.2002 at 6.30 a.m., the accused was found in possession of 30 liters of wash.

3. To substantiate the prosecution case, the prosecution examined PW1 to PW5. Exhibits P1 to P9

are the documents marked on the side

documents, the trial court found that, the accused is CRL.APPEAL NO.663 OF 2005 3 guilty. The accused is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, the accused is sentenced to undergo simple imprisonment for one year. Aggrieved by the conviction and sentence, the present appeal is filed.

4. Heard the learned counsel for the appellant and the learned public prosecutor.

5. The learned counsel for the appellant

submitted that, even if the entire allegations are accepted, the offence under Section 55(g) or 55(a) of the Abkari Act is not made out. The counsel also submitted that, the prosecution miserably failed to prove that, the alleged contraband article seized from the accused reached in the hands of the Analyst. The counsel submitted that, the prosecution miserably failed to prove all the links starting from the seizure of the contraband article till it reaches in the hands of the

Analyst. The counsel submitted that, there is contradiction between the seizure mahazar and the occurrence report regarding description of CRL.APPEAL NO.663 OF 2005 4 the alleged contraband article seized from the accused.

6. The learned public prosecutor submitted that, the trial court after considering the entire evidence

and documents came to the conclusion interfere with the conviction and sentence imposed by the trial court.

7. The point for consideration in this case is whether the accused/appellant committed the offence under Section 55(g) of the Abkari Act.

8. The appellant was charge sheeted alleging offences punishable under Sections 55(a)&(g) of the

Abkari Act. The court framed charge only under Section 55(g) of the Abkari Act. Section 354 of the Code of Criminal Procedure (Cr.P.C.) says about the language and contents of the judgment. Section 354 Cr.P.C. is extracted hereunder: 354. Language and contents of judgment.- (1) Except as otherwise expressly provided by this Code, every judgment referred CRL.APPEAL NO.663 OF 2005 5 to in section 353.-

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reason for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860), or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

Section 354(1)(c) says that, the judgment shall specify the offence (if any) of which and the section of the Indian Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced. Section 354(1)(d) says that, if the

judgment is an order of acquittal, it should contain

the offence under which the accused is acquitted. Surprisingly, in the concluding portion of the impugned judgment, the section and the offence under which the appellant is found guilty is not mentioned. CRL.APPEAL NO.663 OF 2005 6 Section 354(1)(c) mandates that, the judgment should specify the offence of which and the section of the Indian Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced. It is disturbing to say that, the learned Sessions Judge has not considered the mandatory provisions of the Cr.P.C. while delivering a judgment in a sessions case. I leave it there.

9. The prosecution case is that, on 14.8.2002 at 6.30 a.m., the accused was found in possession of 30 litres of wash. The prosecution examined 5 witnesses to substantiate their case. PW1 is the detecting officer. PW2 is the Excise Inspector who accompanied

PW1. PW3 and PW4 are the witnesses who allegedly witnessed the seizure. They turned hostile. PW5 is the investigating officer. Therefore, the only evidence available in this case is that of PW1 and PW2. I perused the evidence of PW1 and PW2. PW1 deposed before the court that after the alleged seizure, he forwarded the contraband article to the Excise office and the same is entrusted to the Excise CRL.APPEAL NO.663 OF 2005 7 Inspector. PW2 is the Excise Inspector. He deposed that, the property is entrusted at Parappanangadi Range Excise office. He also deposed that, the accused and the properties were produced before the court. Exhibit P5 is the property list in this case. The property reached in the court on 14.8.2002 itself. But the property was forwarded to the Chemical Examiner only on 7.9.2002. A perusal of the forwarding note will show that, the property is forwarded to the Joint Chemical Examiner through Excise Guard Sivadasan. The above said Sivadasan was not examined in this case. The property after reaching before the court on 14.8.2002, forwarded to the Chemical Examiner only on

7.9.2002. The property clerk of the court is also not examined to show that, the property was in safe custody. The Excise Guard who took this sample to the Chemical Examiner is not examined.

10. It is the fundamental principle in Abkari

cases that, the prosecution should pr

article till it reaches in the hands of the Analyst. Without the report of the Analyst, the case cannot be proved. PW2 says that, he produced the property before the court. Thereafter, the sample was produced by one Sivadasan, Excise Guard before the Chemical Examiner. He is not examined. The material objects are not marked in this case. There is no explanation from the prosecution for the non production of material objects. Considering the entire facts and circumstances of this case, I think, the prosecution is miserably failed to prove all the links starting from the seizure of the contraband article till it reaches in the hands of the Analyst.

11. Moreover, the alleged seizure of the

contraband article was on 14.8.2002. The final report was filed only on 24.6.2003. There is no explanation from the side of the investigating officer for the delay occurred in the investigation. This Court in Kumaran v. State of Kerala [2016 (4) KLT 718], Chandran v. State [2016(4) KLT 727] and Mukundan v. State of Kerala [2016(3) KLT 532] observed that, if CRL.APPEAL NO.663 OF 2005 9 there is any unexplained delay in investigating Abkari cases, the accused is entitled the benefit of doubt. Considering the entire facts and circumstances of this case, I am of the view that, the appellant is entitled the benefit of doubt.

Hence, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant as per the judgment dated 21.03.2005 in S.C. No.404 of 2003 of the Additional District & Sessions Court, Fast Track Court No.1 (Adhoc), Manjeri are set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant is cancelled.

Sd/- P.V.KUNHIKRISHNAN pkk JUDGE

