

T.Gopi vs Excise Inspector

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Court : Kerala

Decided On : Dec-04-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : CRL.A/1221/2006

Appellant : T.GOPI

Respondent : Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 04TH DAY OF DECEMBER 2020 / 13TH AGRAHAYANA,
1942 CRL.A.No.1221 OF 2006 AGAINST THE ORDER/JUDGMENT IN
SC 17/2005 DATED 08-06-2006 OF ADDITIONAL DISTRICT COURT
(ADHOC), KALPETTA

APPELLANT: T.GOPI AGED 53 YEARS S/O.PACHI, THENTODIYIL
HOUSE, PORUNNANNUR AMSOM, KARINGARI DESOM,
MANANTHAVADY TALUK, WAYANAD DISTRICT. BY ADV.
SRI.N.J.ANTONY RESPONDENTS: 1 EXCISE INSPECTOR
MANANTHAVADY RANGE, WAYANAD DISTRICT. 2 STATE OF

KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1-2 BY PUBLIC PROSECUTOR OTHER PRESENT: SRI.K.B.UDAYAKUMAR, SR.PP THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

===== Dated this the 4th
day of December, 2020

JUDGMENT

Appellant is the accused in S. C. No. 17/2005 on the file of Additional Sessions Judge, (Adhoc-II), Wayanad, Kalpetta. The above case is charge sheeted against the appellant alleging offence punishable under Sections 55(g), 8(1) and (2) of the Kerala Abkari Act.

2. The prosecution case is that, the accused was

found in possession of 1 litres of arrack and 15 litres of wash. Hence, the accused committed the offence under Sections 55(g), 8(1) and (2) of the Kerala Abkari Act.

3. To substantiate the case, prosecution examined PW1 to PW8. Exhibits P1 to P11 are the exhibits marked on the side of the prosecution. MO1 and MO2 are the material objects.

4. After going through the evidence and documents, the trial court found that, the accused committed the offence under Sections 55(g) and 8(1) and

(2) of the Kerala Abkari Act. The accused is sentenced to

undergo simple imprisonment for a period of five years and to pay a fine of Rs.1 lakh. In default of payment of fine, the accused is directed to undergo simple imprisonment for six months. Aggrieved by the conviction and sentence, this Criminal Appeal is filed.

5. Heard the learned counsel for the appellant and the learned Public Prosecutor.

6. The learned counsel for the appellant submitted

that, the appellant is no more. But this is an appeal against the conviction, in which there is a fine of Rs. 1 lakh. Therefore, the learned counsel for the appellant advanced with her arguments. The learned counsel submitted that, the alleged seizure in this case was on 30.12.2002 and the property produced only on 4.01.2003. There is absolutely no explanation from the side of prosecution for the delay of 5 days. The learned

counsel submitted that, the explanation given by the Officer is that, it was during Christmas vacation and that is why it is not produced. That is not an explanation, submitted by the learned counsel for the appellant.

7. The learned Public Prosecutor submitted that,

there is oral and documentary evidence to prove the offence alleged against the appellant. The learned Public Prosecutor also submitted that, the conviction and sentence imposed by the lower court is correct.

8. The point for consideration in this appeal is whether the accused committed the offence as alleged.

9. Admittedly, the alleged seizure was on

30.12.2002, and the property reached the Court only on 04.01.2003. It is true that, that there is an explanation from the side of the prosecution that, the properties were not produced before the Court immediately because it was Christmas vacation period. I think there is some force in the argument of the learned counsel for the accused that, this is not an explanation. Admittedly, the seizure was on 30.12.2002. It can not be accepted that

till 04.01.2003, the Court is not functioning in that jurisdiction. Therefore, there is no proper explanation given by the prosecution and the explanation given can not be accepted. If there is no explanation from the part of the prosecution for the delay in producing the sample before the Court the same is fatal. This point is considered by this Court in Sukumaran v. State of Kerala (2019 (3) KLT 920), Ravi v. State-Sub Inspector of Police, Meppadi (2018 (5) KHC 352) and Vikraman v. State of Kerala (2018 (1) KLT 822). The relevant portion of the judgment in Ravi's case (supra) is extracted hereunder: 8. In order to support the argument, the learned counsel for the appellant cited the ruling in Ramankutty v. Excise Inspector, Chelannur Range, 2013(3) KHC 308 : 2013(3) KLJ 434 : ILR 2013

(3) Ker. 535 : 2013(3) KLT SN 83

wherein it is held that 'in the absence of satisfactory explanation by the prosecution showing the cause of delay, even delay of one day is fatal to the prosecution and therefore, the accused is entitled to the benefit of doubt.

9. In the instant case, there is a delay of four days in producing the contraband

articles before the Court. According to the evidence of PW4, it was kept under his safe custody. But, he has to explain that these contraband articles were produced before the Court with tamper proof. Moreover, Ext.P6 is the copy of the forwarding note. It does not contain the seal, which was alleged to have affixed on the sample. So, without verifying the sample seal, the Court cannot act upon Ext.P6 copy of the forwarding note.

10. In the light of the above discussion, I think the

appellant in this case is entitled to the benefit of doubt. Therefore, this criminal appeal is allowed. The conviction and sentence imposed on the accused as per

judgment dated 08.06.2006 in S. C. No. 17/2005 on the

file of Additional Sessions Judge, (Adhoc-II), Wayanad, Kalpetta is set aside. The appellant is set at liberty. The bail bond, if any, executed by the appellant, is canceled. (Sd/-) P.V.KUNHIKRISHNAN, JUDGE LU

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