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Raveendran vs State of Kerala

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Court : Kerala

Decided On : Jun-29-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : CRL.A/1887/2005

Appellant : Raveendran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN MONDAY, THE 29TH DAY OF JUNE 2020 / 8TH ASHADHA, 1942 CRL.A.No.1887 OF 2005 AGAINST THE JUDGMENT IN SC NO.358/2004 DATED 13-09-2005 OF THE ADDITIONAL DISTRICT AND SESSIONS COURT (ADHOC-1), KOZHIKODE

APPELLANT/ACCUSED: RAVEENDRAN AGED 32 YEARS S/O CHATHU, VALLIL,VELLIYODE AMSOM, VADAKARA TALUK. BY ADV. SRI.SUNNY MATHEW RESPONDENT/COMPLAINANT: STATE OF KERALA THROUGH THE EXCISE INSPECTOR, NADAPURAM, REPRESENTED BY THE, PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. R1 BY SR.PUBLIC PROSECUTOR

SRI.B.JAYASURYA THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 29.06.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: CRL.APPEAL NO.1887 OF 2005 2

JUDGMENT

Dated this the 29th day of June, 2020 ... The appellant is the accused in S.C. No.358 of 2004 on the file of the Additional District and Sessions Judge, Fast Track (Adhoc-I), Kozhikode.

2. The above case is charge sheeted by the Excise Inspector, Nadapuram against the appellant alleging offence punishable under Section 55(a) of the Abkari Act and Rule 9 of the Foreign Liquor Rules.

3. The prosecution case is that, on 19.07.2001 at

about 3 p.m., CW1, the Excise Range

time, they saw the accused going through the road side with a big shopper in his shoulder. On suspicion, they intercepted the accused and verified the big shopper. On verification, three paper packets containing 54 bottles of 180ml of Royal Gold Cup Extra Smooth Whisky was found in it. One bottle was opened. By smelling and tasting, the Detecting Officer found that, it is CRL.APPEAL NO.1887 OF 2005 3 Indian Made Foreign Liquor. It is alleged that all these liquor bottles were brought from Mahe. Hence, the prosecution alleged that, the accused committed the offence.

4. To substantiate the case, the prosecution examined PW1 to PW4. PW1 is the Excise Inspector, who detected the offence. PW2 is the Preventive Officer, who accompanied PW1. PW3 is the independent witness, who turned hostile to the prosecution. PW4 is the Investigating Officer. Exhibit P1 to P7 are the documents marked on the side of the Prosecution. MO1 to MO3 are the material objects.

5. After going through the evidence and documents, the trial court found that, the accused committed the offence under Section 55(a) of the Abkari and Rule 9 of the Foreign Liquor Rules. He is sentenced to

undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,00,000/-. In default of payment of fine, he is directed to undergo simple imprisonment for a further period of six months under Section 55(a) of the Abkari Act r/w Rule 9 of the CRL.APPEAL NO.1887 OF 2005 4 Foreign Liquor Rules. Aggrieved by the conviction and sentence, this Crl.Appeal is filed.

6. Heard the learned Counsel for the appellant Sunny Mathew and also the learned Public Prosecutor.

7. The learned Counsel for the appellant submitted that, even if the entire allegations are accepted, no offence under Section 55(a) of the Abkari

Act is made out. The Counsel also submitted that, there is a long delay in conducting the investigation in this case. He contended that on that ground itself, the accused is entitled an order of acquittal in this case.

8. The learned Public Prosecutor supported the

judgment of the trial court. The Public Prosecutor

submitted that, the trial court after considering all the evidence and documents, convicted and sentenced the accused in accordance to law. There is nothing to interfere with the conviction and sentence imposed by the trial court. He further submitted that, the contemporaneous documents in this case are produced before the Court on the date of arrest itself. The

CRL.APPEAL NO.1887 OF 2005 5 Public Prosecutor also submitted that, simply because, there is delay in filing the final report, the same does not affect the prosecution in this case because the search, seizure and arrest were over on 19.07.2001 and the contemporaneous documents were produced before the Court on the same date itself.

9. The point for consideration in this case is whether the accused committed the offence under Section 55(a) r/w Rule 9 of the Foreign Liquor Rules.

10. In the light of the evidence of PW1 and PW2,

it is clear that, MO1 series of Indian Made Foreign Liquor was seized from the possession of accused. As per Ext.P4 property list, the property was produced before the Court on the same date of seizure. Exhibit P5, forwarding note, is also produced immediately in which there is seal of the Detecting Officer. As per Ext.P6, it is found that, the sample contained ethyl alcohol. In the light of the evidence of PW1 and PW2 and in the light of Exhibits P2, P4, P5 and P6, it is proved that, the accused was found in possession of MO1 series of Indian Made Foreign Liquor. There is

CRL.APPEAL NO.1887 OF 2005 6 nothing to disbelieve the evidence of PW1 and PW2. Of course, PW3 turned hostile to the prosecution. But simply because, PW3 turned hostile to the prosecution, this Court cannot disbelieve the evidence of PW1 and PW2, who are official witnesses. No enmity is proved against the accused from the side of PW1 and PW2. Therefore, the possession of MO1 series by the accused is proved by the evidence of PW1 and PW2 and in the light of Exhibits P2,P4,P5 and P6. Therefore, it is a clear case in which the prosecution is able to prove the possession of MO1 series Indian Made Foreign Liquor by the accused.

11. It is a settled position that, the offence under Section 55(a) of the Abkari Act will attract only if the accused is found in possession of liquor

during the course of import, export, transport, or transit of goods. This point is considered by this Court in Josekutty v. State of Kerala [2013(1) KLT 434]. Therefore, the offence under Section 55(a) of the Abkari Act is not made out in this case. But accused was found in possession of excess quantity of CRL.APPEAL NO.1887 OF 2005 7 Indian Made Foreign Liquor. There is no explanation from the side of the accused for possessing the excess quantity of Indian Made Foreign Liquor. In such circumstances, the only offence attracted in this case is under Section 63 of the Abkari Act. Therefore, the accused can be convicted only under Section 63 of the Abkari Act in this case. Hence;

(i) This Crl.Appeal is allowed in part;

(ii) The conviction and sentence imposed on the appellant under Section 55(a) of the Abkari Act r/w Rule 9 of the Foreign Liquor Rules are set aside;

(iii) The appellant is convicted under Section 63 of

the Abkari Act, and he is sentenced to pay a fine of Rs.5,000/- (Rupees Five thousand only). In default of payment of fine, the accused is directed to undergo simple imprisonment for a period of 15 days;

(iv) The amount already deposited by the appellant CRL.APPEAL NO.1887 OF 2005 8

as per order dated 28.10.2005 in this appeal can be adjusted towards the fine amount and the balance amount will be disbursed to the appellant by the lower court, in accordance to law. Sd/- P.V.KUNHIKRISHNAN pkk JUDGE

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