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Jayakumar 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/1937/2005

Appellant : Jayakumar

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.1937 OF 2005 AGAINST THE JUDGMENT IN SC NO.790/2001 DATED 29-10-2005 OF THE ADDITIONAL DISTRICT & SESSIONS COURT, (FAST TRACK COURT-1), THIRUVANANTHAPRUAM AGAINST THE JUDGMENT IN CP No.111/2000 OF JUDICIAL FIRST CLASS MAGISTRATE'S COURT-II, ATTINGAL

APPELLANT/ACCUSED: JAYAKUMAR S/O SIVASANKARAN PILLAI, SARADA BHAVAN, CHOOTTENYIL, KILIMANOOR VILLAGE. BY ADV. SRI.R.T.PRADEEP RESPONDENT/COMPLAINANT: STATE OF

KERALA REP.BY THE DIRECTOR GENERAL OF PROSECUTION, 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.1937 OF 2005 2

JUDGMENT

Dated this the 29th day of June, 2020 The appellant is the accused in Sessions Case No.790 of 2001 on the file of the Additional District & Sessions Judge (Fast Track Court-1), Thiruvananthapuram.

2. The above case is registered against the appellant alleging offence punishable under Section 55(i) of the Abkari Act.

3. The prosecution case is that, on 15.01.2000

at 5.30 p.m., the accused was found in possession of 9 liters of Indian made foreign liquor of the brand of export quality Lord Nelson XXX Matured Rum, Cane Juice Matured Rum contessa, white field extra reserve Brandy in 12 bottles each bottle having a capacity of 750 ml. kept in a cardboard box for the purpose of sale without any permit or licence in front of the

Krishnan Kovil on the eastern side of the road CRL.APPEAL NO.1937 OF 2005 3 leading to Pullayil from Chootta at a place called Chootta in Kilimanoor Village. Hence, it is alleged that, the accused committed the offence.

4. To substantiate the case, the prosecution examined PW1 to PW4. Exhibits P1 to P7 are the documents marked on the side of the prosecution. MO1 to MO2 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 Act. The accused is sentenced to undergo Rigorous imprisonment for one year and to pay a fine of Rs.1,00,000/-. In default of payment of fine, the accused is directed to undergo Rigorous imprisonment for a further period of six months. Aggrieved by the conviction and sentence, this Crl.Appeal is filed.

6. The learned Counsel for the appellant submitted that, the accused is an Ex-service man and even if the entire allegations are accepted, no offence under Section 55(a) of the Abkari Act is made out against him. According to him, he is having CRL.APPEAL NO.1937 OF 2005 4 permit to possess Indian Made Foreign Liquor. He also submitted that, forwarding note is not marked in this case and on that ground itself, the accused is entitled the benefit of doubt.

7. The learned Public Prosecutor submitted

that, the prosecution has proved the case based on the oral and documentary evidence. There is nothing to interfere with the conviction and sentence imposed by the trial court.

8. The point for consideration in this case is whether the accused committed the offence under Section 55(a) of the Abkari Act.

9. Altogether, four witnesses were examined on the side of the prosecution. PW1 is the alleged independent witness. PW2 is the Preventive Officer of the Excise and PW3 is the Excise Guard, who accompanied PW2. PW4 is the Excise Inspector, who conducted the investigation and submitted the final report.

10. The prosecution case is that, the accused was found in possession of Indian Made Foreign

CRL.APPEAL NO.1937 OF 2005 5 Liquor. Even if the alleged possession is Indian Made Foreign Liquor, unless there is an expert opinion to show that it is liquor as defined in the Abkari Act, no prosecution under the Abkari Act will lie against the accused. For that purpose, the prosecution has to prove all the links starting from the seizure of the contraband article till it reaches in the hands of the Analyst.

11. Admittedly, the forwarding note is not

marked in this case. This Court, in several decisions, considered the relevancy of the forwarding note. Some of the decisions are Gireesh @ Manoj v. State of Kerala (2019(4) KLT 79), Vijayan @ Pattalam Vijayan, and another v. State of Kerala (2018 (2) KHC 814) and Prakasan and another v. State of Kerala

(2016 KHC 96). The relevant portion of the judgment

in Gireesh's case (supra) extracted hereunder: 14. There is another lacuna in the prosecution case. The copy of the forwarding note prepared by PW5 for sending the samples for chemical analysis was not marked in evidence. The forwarding note is expected to contain the specimen impression of the seal used for sealing CRL.APPEAL NO.1937 OF 2005 6

> the bottles containing the samples. In the absence of the forwarding note marked in evidence, it cannot be found that the prosecution has proved beyond reasonable doubt that the very same samples taken at the spot of the occurrence had reached the chemical examiner for analysis in a tamper proof condition (See Prakasan v. State of Kerala (2016 KHC 96 : 2016 (1) KLD 311 : 2016 (1) KHC SN 40 : 2016 (1) KLT SN 96) and Gopalan v. State of Kerala (2016 KHC 541 : 2016 (2) KLD 469 : 2016 (3) KLT SN 16)).

In the light of the above authoritative judgments, it is clear that, the non production of forwarding note is fatal to the prosecution. That itself can be a ground for acquitting the accused. In this case, the prosecution miserably failed to prove the case against the appellant.

12. In the light of the above discussions, I am of the view that, the accused is entitled the benefit of doubt.

Hence, this Crl.Appeal is allowed. The conviction and sentence imposed on the appellant as per the judgment dated 29.10.2005 in Sessions Case No.790 of 2001 on the file of the Additional CRL.APPEAL NO.1937 OF 2005 7 District & Sessions Judge (Fast Track Court-1), Thiruvananthapuram, is set aside. The appellant is set at liberty. Bail bond, if any, executed by the appellant, is cancelled. Sd/-

P.V.KUNHIKRISHNAN pkk JUDGE

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