SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Pradeep Kumar vs State of Kerala,

Pradeep Kumar vs State of Kerala,

SooperKanoon Citation : sooperkanoon.com/1846644

Court : Kerala

Decided On : Jan-06-2020

Judge : Honourable Mr. Justice R. Narayana Pisharadi

Appeal No. : Crl.MC/8945/2018

Appellant : Pradeep Kumar

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI MONDAY, THE 06TH DAY OF JANUARY 2020 / 16TH POUSHA, 1941 AGAINST THE ORDER/JUDGMENT IN SC 467/2015 OF THE II ADDITIONAL ASSISTANT SESSIONS JUDGE, THRISSUR. CRIME NO.14/2004 OF KODUNGALLUR Excise Range Office , Thrissur PETITIONER/ACCUSED: PRADEEP KUMAR AGED 58 YEARS S/O KONNI,KOLANTHARA HOUSE,CHENTHRAPPINNI DESOM,EDATHIRUTHY VILLAGE,KODUNGALLUR TALUK,THRISSUR DISTRICT BY ADVS. SRI.NIREESH MATHEW SRI.N.P.PRAJEESH

RESPONDENT/COMPLAINANT-STATE: STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,HIGH COURT OF

KERALA,ERNAKULAM,KOCHI 682 031. SRI C K PRASAD-PP THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25.11.2019, THE COURT ON 06.01.2020 PASSED THE FOLLOWING: R. NARAYANA PISHARADI, J ---------- Crl.M.C No.8945 of 2018 ---------- Dated this the 6th day of January, 2020

ORDER

The petitioner is the first accused in the case registered as C.R No. 14/2004 of the Kodungalloor Excise Range.

2. The offences alleged against the petitioner are punishable under Sections 55(a) and 58 of the Abkari Act, 1077.

3. The prosecution case is as follows: On 06.07.2004, the

Excise Circle Inspector, Vadanappally conducted search of the house which was taken on rent by the first accused and seized 5206.500 litres of Indian Made Foreign Liquor of different brands from there. Investigation of the case revealed that it was the second accused who had brought the liquor to the aforesaid house and that the third accused had transported the liquor.

4. After completing the investigation of the case, chargesheet was filed against the three accused for the offences punishable under

Sections 55(a) and 58 of the Abkari Act. The second and the third accused faced trial in the case S.C No. 204/2008 before the Additional Assistant Sessions Judge, Thirssur. As per Annexure-B judgment, the learned Additional Assistant Sessions Judge found the second and the third accused not guilty of the offences alleged against them and acquitted them. The petitioner, who is the first accused, was absconding and he had not faced trial and the case against him was split up and refiled as S.C No. 467/2015.

5. This petition is filed under Section 482 Cr.P.C for quashing

the proceedings against the petitioner in the case S.C No. 467/2015 on the ground that the entire substratum of the prosecution case has been lost by virtue of Annexure-B judgment.

6. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

7. Learned counsel for the petitioner contended that the

second and the third accused who faced trial in S.C No. 204/2008 were acquitted not merely on the basis of insufficiency of evidence against them or the infirmities in the evidence adduced by the prosecution against them, but also on the ground that the officer who conducted the investigation of the case had no authority to do it. Learned counsel for the petitioner would contend that, even if the trial against the petitioner is conducted, the same situation will prevail and therefore, continuation of the prosecution of the petitioner would be a futile exercise.

8. Learned Public Prosecutor has submitted that the State has not filed any appeal against Annexure-B judgment.

9. On a perusal of Annexure-B judgment, it is seen that one of

the grounds for acquittal of the second and the third accused, who faced trial in that case, was the incompetency of the officer who conducted the investigation of the case. It is stated by the trial court in Annexure-B judgment as follows:

> The learned counsel for the accused argued that PW1 who was the circle inspector of excise, Vadanappally has no jurisdiction at all for registering this case and to conduct investigation as well as in filing the chargesheet. In the circumstances the learned counsel for the accused number 1 argued that the charge itself is not maintainable. In this case PW1 has no territorial jurisdiction within the jurisdiction of Kodungalloor range. There is a separate circle inspector of excise for the Kodungalloor range. The party of the circle inspector, Kodungalloor was with PW1, but that will not in any way help the prosecution to overcome this important aspect. The learned counsel for the accused was relying on the

judgment of Honourable High Court in Rajan A.N v. State of Kerala (2014 (2) KLD 468) and also on the judgment

in Hamsa Koya v. State of Kerala (2015 (2) KLT S N 25 (case number 35). In these decisions the Honourable High Court of Kerala made it clear that if the officer having no jurisdiction over the area conducted investigation and laid chargesheet then the cognizance taken by the court was against the mandate contained in Section 50 of Kerala Abkari Act. It was held that court had no jurisdiction to take cognizance of the offence

alleged in the complaint filed based on such investigation. Even the direction of Assistant Excise Commissioner will not confer any power on PW1 in conducting investigation and filing of chargesheet. Only by a notification of government it is possible to confer/powers on circle inspector of Vadanappally to act as Abkari Officer with respect to an offence committed within the jurisdiction of Kodungalloor range office. So on that ground itself this prosecution will fail.

10. It is now well settled that investigation of an offence under

the Abkari Act can be done only by an Abkari Officer as defined under the Act. An officer who has no jurisdiction over the place where the occurrence took place has no authority to conduct the investigation of the case. Authority to conduct the investigation in such a case cannot also be delegated to such an officer by a superior officer (See Kunhanna Poojari v. State of Kerala: 2019(4) KHC (292)).

11. In the aforesaid circumstances, even if the prosecution

against the petitioner is continued and trial against him is conducted, it would only be a futile exercise resulting in waste of judicial time. I am of the view that this is a case where the substratum of the prosecution case has been lost by virtue of Annexure-B judgment. Therefore, the proceedings against the petitioner are liable

to be quashed by invoking the power of this Court under Section 482 Cr.P.C.

12. Consequently, the petition is allowed. The entire proceedings against the petitioner in the case S.C No. 467/2015, which are based on C.R No. 14/2004 of Kodungalloor Excise Range, are hereby quashed.

Sd/-R. NARAYANA PISHARADI JUDGE lsn APPENDIX PETITIONER'S/S EXHIBITS: ANNEXURE A TRUE PHOTOCOPY OF THE FINAL REPORT IN CR NO ANNEXURE B CERTIFIED COPY OF THE JUDGMENT PASSED BY THE 11 ADDITIONAL ASSISTANT SESSIONS JUDGE THRISSUR IN SESSIONS CASE NO 204/2008 DATED 11.11.2016 ANNEXURE C TRUE PHOTOCOPY OF THE DECISION IN MOHANLV VS STATE OF PUNJAB REPORTED IN 2018 (4) KHC ANNEXURE E PHOTOCOPY OF THE CRIME AND OCCURRENCE REPORT IN CR.NO.14/2004 OF KODUNGALLUR EXCISE RANGE. RESPONDENTS EXHIBITS: NIL TRUE COPY P.A TO JUDGE LSN

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com