

Remani Vs. State of Kerala

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Court : Kerala

Decided On : Nov-17-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Remani

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD MONDAY,THE17H DAY OF NOVEMBER201426TH KARTHIKA, 1936 CRL.A.No. 596 of 2004 ()
----- AGAINST THE

JUDGMENT

IN SC16852002 of III ADDL.SESIONS COURT, KOLLAM DATED2303-2004.
APPELLANT(S)/ACCUSED:: ----- REMANI, D/O. JANAKI, CHAPRAYIL VEEDU, MARUTHOORKULANGARA, THEKKUM MURI, AYANIVELIKULANGARA VILLAGE. BY ADVS.SRI.SHABU SREEDHARAN SRI.P.A.NOOR MUHAMMED SRI.CHARLES VARGHESE.
RESPONDENT(S)/COMPLAINANT:: -----
STATE OF KERALA, REPRESENTED BY THE INSEPCTOR OF EXCISE RANGE, KARUNAGAPALLY THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA. BY PUBLIC PROSECUTOR SRI.K.K.RAJEEV. THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON1711-2014, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: amk
A.HARIPRASAD, J.

----- Crl.Appeal No.596 of 2004
----- Dated this the 17th day of November, 2014.

JUDGMENT

Learned Sessions Judge, Kollam convicted the appellant in Sessions Case No.1685/2002 for an offence under Section 55 (a) of the Abkari Act and awarded sentence of simple imprisonment for a period of two years and a fine of Rs.1,00,000/- (Rupees one lakh only) with a default sentence. Aggrieved by the conviction and sentence, the accused has come up in appeal.

2. Prosecution case, in short, is that on 15-12-1999, the appellant was found by PW's 1 and 2 carrying two bottles of arrack, each having a capacity of 750 ml in a plastic bag. The witnesses deposed that they have complied with all the formalities under the Act; prepared Ext.P1 seizure mahazar and arrested the accused after her body search by PW5. PW's 1 to 7 were examined and Ext.P1 to P3 were marked on the prosecution side. MO1 series and 2 are the material objects. Crl.Appeal No.596 of 2004 2 There was no defence evidence.

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

4. It is the contention of the appellant that the entire evidence, both oral and documentary, adduced by the prosecution would not show that the appellant is guilty of an offence under Section 55(a) of the Abkari Act. According to the learned counsel, the oral evidence adduced by the prosecution witnesses are totally unbelievable.

5. PW1 is the detecting officer. He was working as Excise Inspector in Karunagapally Excise Circle Office. In chief examination, he stated that while he along with his party were on patrol duty, he saw the appellant on 15-12-1999 at about 1.00 p.m carrying a plastic kit containing two bottles of 750 ml of arrack. On examination of the bottles, it was revealed that she was possessing illicit arrack. It is his case that from the place of Crl.Appeal No.596 of 2004 3 detection, Ext.P1

mahazar was prepared. The accused being a lady, PW5, another lady, conducted her body search. This witness was cross examined at length. The suggestion at the time of cross examination that no label could be found on material objects since it was not prepared from the place of occurrence has been denied. However, it is come out in evidence that in Ext.P1 seizure mahazar, it is not mentioned that the bottles were sealed from the place of occurrence. This assumes importance because of the absence of vital link evidence in this case.

5. PW2 is the Preventive Officer, who was on patrol duty along with PW1. He deposed regarding the sighting of the appellant. PW2 supported the evidence of PW1.

6. PW's 3 and 4, the independent witnesses completely turned hostile to the prosecution. In spite of cross examination, the prosecution could not establish that they were falsely supporting the accused. Crl.Appeal No.596 of 2004 4 7. PW5, a lady, who alleged to have conducted body search of the appellant also turned hostile. Learned counsel for the appellant on the basis of these reasons submitted that the search and seizure of the contraband alleged by the prosecution could not be established by any independent evidence.

8. PW6 was the Preventive Officer in Karunagapally Excise Range Office. The accused was handed over to the officer by PW1. He prepared Ext.P2 occurrence report. It is his version that he prepared arrest memo, arrest notice, thondi list etc. But none of them was produced. At the time of cross examination, PW6 deposed that there is no mention either in Ext.P2 or in Form No.151A that the thondi items were sealed at the time when they were produced before the court. Learned counsel for the appellant contended that non production of forwarding note and requisition to sent the contraband for chemical analysis are very material to find that the prosecution Crl.Appeal No.596 of 2004 5 failed to establish identity of the contraband allegedly recovered from the possession of the appellant. Ext.P3 chemical analysis report will only show that a property included in TR No.505/99 dated 27-06-2000 was sent for analysis. There is absolutely no evidence to hold that the same property was recovered from the possession of the accused. Still further, there is no evidence to find that the same property was produced before

the court. Even though, the Investigating Officer deposed that the thondi clerk attached to the court of the Magistrate took the sample for chemical analysis, there is no document produced to establish that the fact nor the property clerk was examined. In these situations, the learned counsel for the appellant places reliance on Sasidharan v. State of Kerala (2007(1) K.L.T720 to contend a proposition that the prosecution has a duty to prove that it was the sample taken from the contraband liquor seized from the accused had reached the hands of the chemical Crl.Appeal No.596 of 2004 6 examiner in a fool proof condition. In the absence of any connecting link between the contraband allegedly recovered from the possession of the accused and the one later produced before the court, I find that the conviction of the appellant is unsustainable in the light of the binding judicial pronouncement. Therefore, the conviction is liable to be set aside. In the result, the criminal appeal is allowed. Conviction of the appellant under Section 55(a) of the Abkari Act awarded by the trial court is hereby set aside. She shall be set free forthwith, if not wanted in any other case. Her bail bond shall stand cancelled. If any amount has been deposited by the appellant as a condition for suspension of sentence, it shall be returned to her. All pending interlocutory applications will stand dismissed. Sd/- A.HARIPRASAD, amk JUDGE.

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