

Mohandas Vs. State of Kerala

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Court : Kerala

Decided On : Nov-21-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Mohandas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.HARIPRASAD FRIDAY, THE 21ST DAY OF NOVEMBER 2014 30TH KARTHIKA, 1936 CRL.A.No. 1381 of 2004 (A) ----- AGAINST THE

JUDGMENT

IN S.C.NO. 660/2002 of ADDITIONAL SESSIONS COURT , FAST TRACK(ADHOC-I), ALAPPUZHADATED 23-07-2004 APPELLANT(S)/ACCUSED:: ----- MOHANDAS @ PAUL, S/O. DAMODHARAN, KOCHUTHARAYIL, KANNAMANGALAM. BY ADV. SRI.GEORGE VARGHESE PERUMPALLIKUTTIYIL RESPONDENT(S)/COMPLAINANT:: ----- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA.

2. THE SUB INSPECTOR, MAVELIKKARA POLICE STATION, MAVELIKKARA. BY PUBLIC PROSECUTOR SMT.MADHU BEN THIS CRIMINAL APPEAL

HAVING BEEN FINALLY HEARD ON 21.11.2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.HARIPRASAD, J.

----- Crl.Appeal No.1381 of 2004
----- Dated this the 21st day of November, 2014.

JUDGMENT

Appeal against conviction of the appellant in S.C.No.660 of 2002 on the file of Additional Sessions Court, Alappuzha for an offence under Section 8 of the Abkari Act (in short, "the Act"). It is alleged that on 31.03.2001 at about 11.45 a.m., the Sub Inspector of Police, Mavelikkara and his party, while on patrol duty, found the appellant carrying a can containing illicit arrack. On seeing the Police officers, he abandoned the can and ran away. After completing the formalities, the case was registered and later the accused was arrested.

2. Four witnesses were examined on the prosecution side and five documents were marked in the trial. DW1 is the defence witness. Exts.D1 and D2 are the documents on the side of the defence. MO1 is the can allegedly possessed by the accused.

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

4. PW1 is a Constable attached to the Mavelikkara Police Station, who accompanied PW2 at the time of detection of the offence. It is the definite case of PWs 1 and 2 that on 31.03.2001, while on patrol duty, Crl.Appeal No.1381/2004 2 they found the accused near Vadakkankovil Temple at about 11.45 a.m. He was standing near the temple with a can in his possession. On seeing the Police party, the accused threw the can and ran away from the place. In spite of chasing him, the Police Officers could not apprehend him. On examination, it was found that the can contained 1.5 litres of illicit arrack. As directed by PW2, PW1 took samples in three bottles of 150 ml. each capacity and they were properly sealed and labelled. It is the case that PW1 affixed seals on the bottles to ensure its genuineness. PW2 also stated in support to the version of PW1. PW2 further stated that he prepared Ext.P1 mahazar from the place of occurrence. Ext.P2 is the first information report and Ext.P3 is the property list. The defence has a definite case that an innocent

person is falsely implicated on account of political rivalry nurtured by PW3 and his brother. It is also suggested to PWs 1 and 2 that the Police were unduly helping the ruling party to entrap the appellant/accused in a false case. All these suggestions are denied by PWs 1 and 2.

5. PW3 is an independent witness who supported the prosecution case. It is true that there is some inconsistency between the evidence of PW3 and that of PWs 1 and 2. According to PW3, the contraband article in the can along with three pepsi bottles were recovered from the northern side of the temple, whereas PWs 1 and 2 stated that the Crl.Appeal No.1381/2004 3 accused abandoned the can near the road and ran away. It is also suggested to these witnesses that the accused is a handicapped person with some deformity to his right leg. Therefore possibility of running away on seeing the Police Officers and the Police Officers not catching him are improbabilities, according to the learned counsel for the appellant. That apart, reliance is placed on Ext.D1, a lawyer notice issued on 16.03.2001 in the name of PW3 and his brother as per the instructions of the appellant. It is mentioned in Ext.D1 that PW3 and his brother were enmically disposed to the appellant on account of political differences of opinion. Further, it is alleged that PW3 and his brother threatened the appellant and his household that they would be implicated in false cases and put behind the bars. The incident in this case happened on 31.03.2001. Learned counsel for the appellant, therefore, contended that the appellant was anticipating false implication in a criminal case at the instance of PW3 and his brother by influencing Police Officers.

6. Another infirmity pointed out in this case is that no forwarding note or requisition for sending the contraband for chemical examination was produced. Even though PW2 stated that he had affixed a seal on the sample bottles, it is not proved as to what is the nature and description in the seal. Had the forwarding note been produced in the case, it would Crl.Appeal No.1381/2004 4 have contained the sample seal affixed. Not only that, in the absence of forwarding note and requisition for sending the contraband for chemical analysis, it is not clear as to which property was requested to be forwarded to the Chemical Examiner's Lab. The descriptions in Ext.P5, chemical analysis report, do not tally with those in Ext.P3 property list. In this context, learned counsel for the appellant places

reliance on the decision in Rajamma v. State of Kerala (2004 KHC2448 where a learned Single Judge of this Court considered the effect of not producing the forwarding note at the time of evidence. In that case the Investigating Officer did not depose as to the descriptions in the specimen seal. The law is settled as per the pronouncement in Ravi v. State of Kerala (2011 (3) KLT353 that there must be link evidence to establish that the contraband alleged to have been recovered from the accused was properly dealt with and without any possibility of tampering, it reached the Chemical Examiner's Laboratory in a safe condition. In the absence of any connecting link, I find that the conviction of the appellant cannot be sustained as he is entitled to get the benefit of doubt. In the result, the appeal is allowed. Conviction of the appellant in S.C.No.660 of 2002 on the file of the Additional Sessions Court, Fast Track (Adhoc-I), Alappuzha is hereby set aside. He shall be set free Crl.Appeal No.1381/2004 5 forthwith, if not wanted in any other case. His bail bonds are cancelled. The amount, if any, deposited as a condition for suspending the sentence shall be returned to the appellant. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

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