Raveendran Vs. The Excise Inspector, Kozhikode

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Court : Kerala

Decided On : Jan-15-2015

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Raveendran

Respondent : The Excise Inspector, Kozhikode

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE15H DAY OF JANUARY201525TH POUSHA, 1936 Crl.Rev.Pet.No. 3035 of 2003 ( ) ------------------------------------- AGAINST THE

JUDGMENT
IN Crl. APPEAL3042001 OF ADDL.SESSIONS COURT, KOZHIKODE, DATED1809-2003 & AGAINST THE

JUDGMENT
IN CC9331997 of J.M.F.C.-III, KOZHIKODE, DATED2605-2001 REVISION PETITIONER(S): ----------------------------------- 1. RAVEENDRAN, S/O. KUNHIRAMAN, THUSHARA HOUSE, VELUR AMSOM, KOZHIKODE.

2. SOMAN, S/O. APPU, KALATHUMMARATH, NADUVATTOM AMSOM, KOZHIKODE. BY ADV. SMT. K.V.RESHMI RESPONDENT(S): ------------------------ 1. THE EXCISE INSPECTOR, KOZHIKODE RANGE.

2. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT. MADHU BEN .M. THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON1501-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ss K. RAMAKRISHNAN, J.

--- Crl.R.P.No.3035 of 2003 -- Dated this the 15th day of January, 2015

ORDER

Accused Nos. 1 and 2 in C.C.No.933/1997 on the file of the Judicial First Class Magistrate Court-III, Kozhikode, are the revision petitioners herein. The revision petitioners were charge-sheeted by the Excise Inspector, Kozhikode Range, in CR. No.74/1996 of that range under Section 55(a) of Abkari Act.

2. The case of the prosecution in nut shell was that, on 08.11.1996, at about 07.15 a.m., the revision petitioners who were the conductor and driver of the K.S.R.T.C bus with Reg.No.KL-15/1710(TA676 in collusion with each other were found carrying 20 bottles of 750 m.l. capacity, each containing Mc Dowell No.I brandy and four bottles of 750 m.l. capacity, each containing Bag Piper Whisky, keeping the same in the battery box from Karnataka to Kozhikode, which is intended to be sold in Crl.R.P.No.3035 of 2003 2 Karnataka only and thereby both of them have committed the offence punishable Under Section 55(a) of the Abkari Act.

3. After investigation, final report was filed before the Judicial First Class Magistrate Court-III, Kozhikode, where it was taken on file as C.C.No.933/1997. When the revision petitioners appeared before the court below, the particulars of offence were read over and explained to them and they pleaded not guilty. In order to prove the case of the prosecution, PWs 1 and 2 were examined and Exts.P1 to P7, MO1 series and MO2 series were marked on the side of the prosecution. After closure of the prosecution evidence, the revision petitioners were questioned under Section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them in the prosecution evidence.

They have further stated that, they have not committed any offence and they are innocent of the same. Crl.R.P.No.3035 of 2003 3 No defence evidence was adduced on their side. After considering the evidence on record, the trial court found the revision petitioners guilty under Section 55(a) of the Abkari Act and convicted them thereunder and sentenced them to undergo rigorous imprisonment for one year each and also to pay a fine of 25,000/- each, in default to undergo simple imprisonment for two months each. Aggrieved by the order of conviction and sentence passed by the court below, the revision petitioners filed Crl.Appeal 304/2001 before the Sessions Court, Kozhikode, and the same was made over to First Additional Sessions Court, Kozhikode, for disposal and the leaned Additional Sessions judge by the impugned judgment, dismissed the appeal, confirming the order of conviction and sentence passed by the court below. Dissatisfied with the same, the present revision has been filed by them.

4. Heard the counsel for the revision petitioners and learned Public Prosecutor. Crl.R.P.No.3035 of 2003 4 5. The counsel for the revision petitioners submitted that, except the interested testimonies of the Excise officials, no other independent witnesses have been examined to prove the incident. Further it cannot be said to be an illicit liquor and mere possession of foreign liquor will not amount to an offence under Section 55(a) of the Abkari Act. The learned counsel also submitted that, in a similar matter, this court in Crl.R.P.No.2255/2003 reduced the imprisonment, till rising of the court, considering the period of time lapsed after the incident and also the nature of contraband article transported.

6. The learned Public Prosecutor supported the concurrent findings of the court below.

7. The case of the prosecution as emerged from the prosecution witnesses was that, PW2 who was working as Excise Inspector of Kozhikode Excise Range, got information that Karnataka made foreign liquor was being imported in the K.S.R.T.C buses from Bangalore to Crl.R.P.No.3035 of 2003 5 Kozhikode and on the basis of the information, he along with PW1, the Preventive Officer, went to the bus stand after sending Ext.P4 search memorandum to court and conducted search in the presence of witnesses and on examination of the bus, he found MO1

and MO2 series bottles containing Indian made Foreign Liquor to be sold in Karnataka only kept in the battery box of the vehicle and thereafter he seized the same as per Ext.P2 search list in the presence of witnesses, after taking sample of one bottle each from each category and affixing labels, seal as per Rules and thereafter he had also seized Ext.P3 log sheet of the bus, which would go to show that the revision petitioners were working in the bus on that date and the bus was operating from Bangalore to Kozhikode. He arrested the revision petitioners and released them on bail. Thereafter he came to the office and prepared Ext.P5 occurrence report as Crime No.74/1996 under Section 55(a) of the Abkari Act against the revision petitioners and sent Crl.R.P.No.3035 of 2003 6 the MOs to the court along with property list and also sent Ext.P6 request for sending the sample for chemical analysis and the samples were sent from court and Ext.P7 chemical analysis report was obtained. PW2, himself had conducted the investigation and submitted final report.

8. PW2 had deposed the manner in which the search was conducted and seizure and arrest were effected. Though he was cross examined at length, nothing was brought out to discredit his evidence on this aspect. Further PW1, Preventive Officer, who accompanied him also corroborated the evidence of PW2 on this aspect. Ext.P2 search list will go to show that, it was Indian made Foreign Liquor intended to be sold at Karnataka only. Ext.P3 log sheet will go to show that, revision petitioners were the conductor and driver of the bus respectively at the relevant time. There is no explanation forthcoming from the side of the revision petitioners as how it had come in the battery box of the vehicle. Once it is proved by the prosecution Crl.R.P.No.3035 of 2003 7 that, the article was found in a battery box over which others have no control and only the persons in charge of the vehicle will be in control of the same, it can only be presumed that, it was in their conscious possession and it was intended for the purpose mentioned in Section 55(a) of the Act invoking the presumption under Section 64 of the Act. So they cannot pretend ignorance about the presence of the contraband article in the bus. Considering the facts that, it was intended to be sold in Karnataka and huge quantity was seized and there is no documents produced by the revision petitioners to prove that it was lawfully obtained from any depot in India and it was transported in the bus coming from Bangalore to Kozhikode, the courts below

were perfectly justified in coming to the conclusion that, it was intended to be imported from Karnataka to Kerala for the purpose of sale as defined under Section 55 (a) of the Abkari Act, invoking the presumption under Section 64 of the Abkari Act and rightly found them guilty Crl.R.P.No.3035 of 2003 8 for the offence under Section 55(a) of the Abkari Act and the concurrent findings of the court below on this aspect do not call for any interference.

9. As regards the sentence is concerned, the incident occurred in the year 1996. Further there is nothing on record to show that, it was sold by them and thereby obtained any monetary benefit as well. Considering the nature of contraband article and at the most, it may cause some loss to the Government, if it is allowed to be used in Kerala, there is much seriousness in the offence. So considering this fact, this court feels that, the view taken by another Single Judge in Crl.R.P.2255/2003 in a similar matter can be taken in this case also. While retaining the fine imposed by the court below, the substantive sentence can be reduced to imprisonment till rising of the court and that will meet the ends of justice. So the sentence is modified as follows: The revision petitioners are sentenced to Crl.R.P.No.3035 of 2003 9 undergo imprisonment till rising of the court and also to pay a fine of 25,000/- each, in default to undergo simple imprisonment for two months each. Two months time is granted to the revision petitioners to surrender before the court and pay the fine, till then, the execution of sentence is directed to be kept in abeyance. With the above modification of the sentence alone, the revision is allowed in part and disposed of accordingly. Office is directed to communicate this order to the court below, immediately. Sd/- K. RAMAKRISHNAN, JUDGE // True Copy// P.A. to Judge ss