Raghavan Vs. State of Kerala

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Court : Kerala

Decided On : Feb-20-2015

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Raghavan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW FRIDAY,THE20H DAY OF FEBRUARY20151ST PHALGUNA, 1936 CRL.A.No. 1215 of 2004 ---------- AGAINST THE

JUDGMENT
IN SC3072001 OF ADDITIONAL DISTRICT & SESSIONS COURT (AD-HOC) COURT-I, PATHANAMTHITTA DATED1405-2004 APPELLANT/ACCUSED: ---------- RAGHAVAN, SON OF ADICHAN, THARASSERI MELATHIL HOUSE, PARAKKARA MURI PANDALAM THEKKEKARA VILLAGE, ADOOR TALUK PATHANAMTHITTA DISTRICT. BY ADVS.SRI.BIJI MATHEW SRI.JOHNSON VARGHESE RESPONDENT/COMPLAINANT: ---------- THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON2002-2015, THE

COURT ON THE SAME DAY DELIVERED THE FOLLOWING: shg/ K. ABRAHAM MATHEW, J.

- Crl.A. No.1215 of 2004 - Dated this the 20th day of February, 2015

JUDGMENT

The appellant was tried for the offence under Section 8 of the Abkari Act. The allegation was that he was found to be in possession of 1= litres of arrack at his house. The learned Sessions Judge convicted him and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1 lakh with a default clause.

2. The prosecution case is this: PW1 and PW3 were preventive officers attached to Adoor Excise Range Office. When they were on patrol duty they got information that the appellant had kept in his house arrack. PW1 prepared a search memo and sent it to the court and thereafter he along with PW2 went to the house of the appellant. He was alone in the house. The officers found 1= litres of arrack in a bottle kept in the eastern room in the house. It was seized and sealed. Ext.P2 mahazar was prepared. The appellant was arrested. The incident took place at 12.30 p.m. on Crl.A. No.1215 of 2004 -2- 14.11.1997. The seized liquor was sent for chemical analysis through court. Ext.P11 report shows that the liquor was arrack.

3. PW2 and PW4 are independent witnesses for the search and seizure. Both of them denied having witnessed the search and seizure. But PW2 admitted that he signed Ext.P2 mahazar, Ext.P3 search list and Ext.P4 arrest memo. He would say that he put his signature in blank papers only. In his examination-in-chief it was brought out that he came to the court to give evidence along with the appellant. It is very clear that he is loyal to the appellant.

4. PW4 denied signing of Ext.P2 mahazar, Ext.P3 search list and Ext.P4 arrest memo. In the examination-in- chief he denied that he knew the appellant. In the further examination conducted by the learned Public Prosecutor, he admitted that

his statement was false. The distance between the houses of himself and the appellant was only = k.m. He also is not a reliable witness.

5. The learned counsel for the appellant vehemently Crl.A. No.1215 of 2004 -3- argued that there is no evidence to prove that the house from which liquor was seized was in the ownership and possession of the appellant. Ext.P10 ownership certificate issued by PW6, Secretary of Pandalam Thekkekara Grama Panchayat, proves that the house is in the ownership of the appellant.

6. Another submission of the learned counsel is that sample was not taken at the place of occurrence. That is true. But there is no law which says that sample should be taken at the place of incident. It came out in the evidence that the seized liquor was packed and sealed at the place of occurrence itself. Yet another submission of the learned counsel is that in Ext.P2 mahazar there is no mention that label was affixed on the sample. That is not material in the nature of the case.

7. In the evidence of PW1 and PW3 Preventive Officers who detected the offence there are no material contradictions or discrepancies. Their evidence is acceptable. Crl.A. No.1215 of 2004 -4- 8. In his examination under Section 313 Cr.P.C. the appellant stated that he was not residing in the house from which the seizure was made. But neither PW2 nor PW4, who deposed in his favour and who belonged to the same locality, have such a case. It was not even suggested to them that the appellant was residing elsewhere. More over, it was not even suggested to any of the witnesses that he was residing elsewhere.

9. When the seizure was made, the appellant alone was in the house. The contraband was kept in an open area in the corner of a room. The irresistible conclusion is that it was he who kept the contraband in the room. The learned Sessions Judge rightly came to the conclusion that he was in possession of the seized liquor. The conviction is only to be upheld.

10. The learned counsel for the appellant submitted that the appellant is aged 72 years now and some leniency may be shown in the matter of sentence. The incident happened about 18 years ago. It is submitted that he is not Crl.A. No.1215 of 2004 -5- involved in any other case. Having regard to these facts, I am inclined

to take a lenient view. The sentence will be modified. The period of imprisonment will be reduced to three months. The fine of Rs.1 lakh imposed by the lower court is the minimum prescribed by the law. The default sentence is two years simple imprisonment. This will be reduced to two moths. In the result, this appeal is allowed in part. Conviction of the appellant under Section 8 of the Abkari Act is confirmed. The sentence is modified as follows: The appellant is sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.1,00,000/- (Rupees one lakh only). In default of payment of the amount, he shall undergo simple imprisonment for a further period of two months. Sd/- K. ABRAHAM MATHEW JUDGE //True copy// P.A. TO JUDGE shg/