

Rajeev Vs. The State of Kerala

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Court : Kerala

Decided On : May-22-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Rajeev

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID FRIDAY, THE 22D DAY OF MAY 2015 1ST JYAISHTA, 1937 CrI.MC.No. 75 of 2015 () ----- AGAINST SC9212014 of SESSIONS COURT, ALAPPUZHA CRIME NO. 131/2000 OF ALAPPUZHA SOUTH POLICE STATION , ALAPPUZHA PETITIONER(S): ----- RAJEEV, AGED 46 YEARS, KURISINGAL VEEDU, CHERTHALA SOUTH PANCHAYATH, CHERTHALA. BY ADV. SRI.B.PRAMOD RESPONDENT/COMPLAINANT: ----- THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.P.MAYA THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06-02-2015, AND THE COURT ON 22-5-2015 PASSED THE FOLLOWING: CrI.MC.No. 75 of 2015 APPENDIX PETITIONER'S EXHIBITS: ----- ANNEXURE-I: TRUE COPY OF THE CHARGE SHEET IN CRIME NO.131/2000 OF ALAPPUZHA SOUTH POLICE /TRUE COPY/ P.S TO JUDGE P.UBAID, J.

~~~~~ Crl.M.C. No.75 of 2015 ~~~~~ Dated this the 22nd May, 2015

## ORDER

The petitioner herein has been facing prosecution under Section 20 (b) (1) of the Narcotic Drugs and Psychotropic Substances Act as it stood before the Amendment Act of 2001, on the allegation that he was found possessing, 103 gms of ganja on 31.3.2000. The case is now pending before the Court of Session, Alappuzha as S.C No.921 of 2014. In view of the provisions contained in Section 41 of the Narcotic Drugs and Psychotropic Substances (Amendment) Act,2001, the petitioner seeks change of Forum, on the contention that the case will have to be tried by the Court of the Judicial First Class Magistrate having jurisdiction. For easy reference, the main Act is being referred to as 'NDPS Act', and the Amendment Act, 2001 is being referred to as 'Amendment Act'.

2. Section 41 of the Amendment Act provides that notwithstanding anything contained in sub-section (2) of Section (1) of the the Amendment Act, all cases pending Crl.M.C. No.75 of 2015 2 before the courts, or under investigation, at the commencement of the Amendment Act, shall be disposed of in accordance with the provisions of the Principal Act as amended by the Amendment Act, and accordingly, any person found guilty of any offence punishable under the Principal Act, as it stood immediately before such commencement, shall be liable for a punishment which is lesser than the punishment for which he is otherwise liable at the date of commission of such offence.

2. By way of the Amendment Act 2001, the act of offence of possession, or otherwise dealing with narcotic drugs and psychotropic substances including ganja, stands categorised quantity-wise. After the amendment, the matter is quantity-wise dealt with, like small quantity, commercial quantity, and intermediate quantity in between small quantity and commercial quantity. Possession of ganja up to 1 kg is now punishable under Section 20 (b) (ii) (A) of the NDPS Act, and the offence is now triable by the Judicial First Class Magistrate having jurisdiction. Before the Amendment Act, 2001, even cases involving such small quantity were Crl.M.C. No.75 of 2015 3 triable by the Special Court or the Court of Session as

the case may be. In this case, the accused was found possessing small quantity of ganja on 31.3.2000, when the Principal NDPS Act stood unamended. At that time, the offence alleged against the petitioner was triable by the Special Court or the Court of Session as the case may be. But now, after the 2001 amendment to the Principal Act, such offences are triable by the Judicial First Class Magistrate having jurisdiction. That is why the petitioner now seeks orders for change of trial Forum. Right it is, that if the offence is tried by the Judicial First Class Magistrate Court, the convicted accused can prefer appeal before the Court of Session, and if he failed any appeal, he can come before the High Court also by way of revision. But if the offence is tried by the Special Court or the Court of Session, the accused will have only one stage to challenge the conviction. But in such matters, the consideration cannot be the right of appeal, or the different options to challenge the conviction. We must be strictly governed by the provisions of the law regarding the trial procedure and the Forum for CrI.M.C. No.75 of 2015 4 trial.

3. An Amendment Act will not have any independent existence or force except to the extent of amending or modifying the provisions of the Principal Act. It is pertinent to note that Section 41 of the Amendment Act does not specifically amend any provision of the Principal Act. Forum for the trial of offences is prescribed under Sections 36A and 36D of the Principal Act. Clause (a) to Section 36A (1) of the Principal Act provides that all offences under the Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed, or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government. The minimum sentence provided for the offence alleged against the petitioner herein as on the date of commission of the offence was imprisonment for five years. As on the said date, the offence was triable by the Special Court or the Court of Session. CrI.M.C. No.75 of 2015 5 4. Section 36D of the NDPS Act provides that any offence committed under the Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act 1988, which is triable by a Special Court shall, until a Special Court is constituted under Section 36, notwithstanding anything contained in the Code of Criminal Procedure, 1973, be tried by a Court of Session. Sub-section (2) further provides that where any

proceedings in relation to any offence committed under the Act on or after the commencement of the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988 are pending before a Court of Session, then notwithstanding anything contained in sub-section (1), such proceeding shall be heard and disposed of by the Court of Session.

5. In view of the specific provision contain in sub-section (2) to Section 36D of the Principal Act, the case against the petitioner now pending before the Court of Session, will have to continue there, and it cannot be made over or transferred to the Special Court, if at all a Special Court is established by the Government in the area, after the CrI.M.C. No.75 of 2015 6 commission of the said offence.

6. As already observed, Section 41 of the Amendment Act, 2001, does not in any manner amend the provisions of Section 36D of the Principal Act. When sub-section (2) to Section 36D provides that cases pending before the Court of Session, will have to continue there and shall be heard and disposed of by the Court of Session despite establishment of a Special Court under Section 36 of the Act, no amendment or modification is made therein by the Amendment Act, 2001, or Section 41 thereof. Here, I find that Section 41 of the Amendment Act 2001, gives only a benefit of sentence to the accused, in view of the post- amendment categorisation of offences quantity-wise. The mere fact that, a benefit regarding sentence is given by Section 41 of the Amendment Act 2001, will not entitle the accused to claim change of Forum from the Court of Session or the Special Court, to the Court of the Judicial First Class Magistrate having jurisdiction, in view of sub-section (2) to 36D of the Principal Act, which is clear and unambiguous as to how a pending prosecution should be dealt with. Sub- CrI.M.C. No.75 of 2015 7 section (2) to Section 36D stands not in any manner amended or modified by Section 41 of the Amendment Act.

7. When the provision regarding Forum for trial provided under sub-section 2 to Section 36D of the Principal Act stands not amended by the Amendment Act, as regards offences committed before the amendment, the petitioner herein cannot claim any benefit under Section 41 of the Amendment Act 2001 except the benefit of sentence provided therein. Thus, I find that the present CrI.M.C claiming change

of Forum from the Court of Session to the Court of the Judicial First Class Magistrate is meritless and it is liable to be dismissed. The trial will have to continue in the Court of Session. In the result, this CrI.M.C is dismissed. Sd/- P.UBAID JUDGE ma /True copy/ P.S to Judge

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