Bhaskaran Vs. State of Kerala

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Court : Kerala

Decided On : Aug-19-2015

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appellant : Bhaskaran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V WEDNESDAY, THE19H DAY OF AUGUST201528TH SRAVANA, 1937 Crl.Rev.Pet.No. 834 of 2006 ( ) ---------- AGAINST THE

JUDGMENT
IN CRL.A.NO.153/2001 of ADDL.SESSIONS COURT-I,MAVELIKKARA AGAINST THE

JUDGMENT
IN C.C.NO.470/1999 of J.M.F.C.-II, CHENGANNUR REVISION PETITIONER(S)/APPELLANT/ACCUSED:

BHASKARAN@KUNJURAMAN, S/O.SANKARAN, KALABHAVAN, PAYYANALLOOR PALAMEL, MAVELIKKARA. BY ADV. SMT.ANITHA M.N. (EKM) RESPONDENT(S)/COMPLAINANT:

---------- STATE OF KERALA, REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON1908- 2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bb RAJA VIJAYARAGHAVAN V, J.

---------- Crl.R.P.No.834 of 2006 ---------- Dated this the 19th day of August, 2015

ORDER

The petitioner who is the sole accused in C.C.No.470/1999 on the files of the Judicial First Class Magistrate Court - II, Chengannur challenges the concurrent verdict passed against him under section 55(a) of the Abkari Act. As per the judgment dated 25.04.2001, the petitioner was found guilty under section 55(a) of the Abkari Act and he was sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.25,000/- and in default to undergo simple imprisonment for 2 months.

2. The case of the prosecution can be summarised as follows: On 20.01.1997 at about 6 p.m., the petitioner was found in possession of 18 litres of arrack in 2 cans and he Crl.R.P.No.834 of 2006 :

2. : was found carrying the same through the varambu in the paddy filed in front of his house in violation of the provisions of the Abkari Act. It was PW1 - the Excise Inspector who along with PW2 - another Excise Inspector who spotted the petitioner. They restrained the petitioner and found on verification that the cans carried by the petitioner contained 18 litres of arrack. The petitioner was arrested from the spot and samples were taken. The contraband articles were seized and labelled as per Ext.P1 mahazar. Later, the Excise Inspector registered Ext.P3 occurrence report. Further investigation was conducted by PW6 - the Excise Inspector and he laid the charge before court. In order to prove the case of the prosecution, PWs 1 to 6 were examined and Exts. P1 to P5 were marked. MOs 1 and 2 were produced and identified. On the basis of the evidence let in, the learned magistrate came to the conclusion that the prosecution had succeeded in

proving the offence against the petitioner. The appeal preferred by the petitioner against the conviction and sentence was Crl.R.P.No.834 of 2006 :

3. : dismissed as per judgment dated 12.01.2006 in Crl.A.No.153/2001.

3. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

4. It was contended by the learned counsel appearing for the petitioner that the contraband articles allegedly seized on 20.01.1997 were produced before court only on 02.06.1997 and that too along with the charge sheet. It was further contended that Ext.P1 scene mahazar, and Ext.P4 property list allegedly prepared by the detecting officer on 20.01.1997 was also produced before court only after about 6 months ie., 02.06.1997. It was finally urged that the prosecution has not produced any forwarding note or requisition letter to prove unmistakably that it was the contraband articles seized which were sent over to the Chemical Examiner's Lab for analysis. Crl.R.P.No.834 of 2006 :

4. :

5. I have examined the prosecution evidence as well as the judgment rendered by the courts below. The records would reveal that it was on 20.01.1997 , while PW1 - the Excise Inspector was on patrol duty, he had come across the petitioner carrying 2 black plastic cans one in each hand. On the basis of suspicion, the petitioner was detained and on examination of the can, it was found that it contained illicit arrack. Ext.P1 mahazar was prepared by PW1 on 20.01.1997 in the presence of witnesses. In Ext.P1 mahazar, it has been mentioned that 2 cans having a capacity of 10 litres each containing a total of 18 litres of arrack was seized as per Ext.P1 mahazar. From both the cans, 250 ml of arrack was taken in 2 bottles of 375 ml capacity as sample for the purpose of sending it to the Chemical Examiner's Lab. After preparation of Ext.P1 mahazar, the said officer produced the contraband articles as well as the documents prepared before PW5 - Manoharanpillai, the Excise Inspector who in turn registered Ext.P3 crime and occurrence report. In Ext.P3 crime and Crl.R.P.No.834 of 2006 :

5. : occurrence report, it is mentioned that the contraband articles as well as the sample bottles seized by PW1 was produced before the said officer. It was thereafter, the investigation was conducted by PW6 who laid the charge before court. In the mean time, it is seen that a requisition was sent to the court for sending the articles for chemical analysis and the same was sent. Ext.P5 is the certificate of chemical analysis issued by the Chemical Examiner to the Government. Ext.P5 would reveal that it was as per requisition dated 23.06.1997 vide TR1261997 that the sample bottles were sent to the Chemical Examiner from the Judicial First Class Magistrate Court, Mavelikkara. Ext.P4 is the thondy list prepared by the Excise Inspector, Mavelikkara and produced before the Judicial First Class Magistrate Court - II, Chengannur. Ext.P4 thondy list will also reveal that the contraband articles as well as the sample bottles were in fact produced before the learned magistrate only on 02.06.1997 and it was after production of the contraband articles before the magistrate on Crl.R.P.No.834 of 2006 :

6. :

02. 06.1997 that a requisition letter dated 23.06.1997 was issued for the purpose of sending the items for chemical analysis as is revealed from Ext.P5.

6. In Ravi Vs. State of Kerala and Anr. [2011 (3) KHC121, the question before a Division Bench of this Court was as to whether it is necessary that article seized under section 34 of the Abkari Act be produced before court forthwith either by virtue of section 102(3) of the Code or any other provisions of Abkari Act or Abkari Manual. The reference was answered by the Division Bench holding that, it is not necessary to produce the article seized under S.34 of the Abkari Act before the Magistrate "forthwith" either by virtue of S.102(3) Cr.P.C or by virtue of any of the provisions of the Abkari Act or the Abkari Manual. What is enjoined by the statute is only that the seizure of the property should be reported forthwith to the Court. It was further held that the production of the property before Court (wherever it is practicable) should also take place without Crl.R.P.No.834 of 2006 :

7. : unnecessary delay. There should be explanation for the delay when there is delayed production of the property. In the instant case, the seizure was reported before the magistrate only after about 6 months from the date of seizure. No

explanation was forthcoming from the detecting officer or the officer who laid the charge with regard to the delay in reporting the seizure before the learned magistrate. The prosecution also has not let in any evidence to show in whose possession the contraband articles were retained from 20.01.1997, the date of Ext.P1 seizure till 02.06.1997 on which day the contraband articles were produced before court along with the charge sheet.

7. In the same decision, it was further held that the prosecution, in a case of this nature can succeed only if it is shown that the contraband articles which were allegedly seized from the accused ultimately reached the hands of the Chemical Examiner by change of hands in a tamper-proof condition. It was further held that no conviction can be Crl.R.P.No.834 of 2006 :

8. : entered against the accused in a prosecution as the present one unless it is proved that the sample which was analysed in the Chemical Examiner's laboratory was the very same sample drawn from the contraband liquor allegedly found in the possession of the accused. There has to be a satisfactory link evidence to show that it was the same bottles seized from the appellant which eventually found their way into the hands of the Chemical Examiner and that there was no meddling or tampering with the bottles while they were in the custody of PW4. The failure on the part of the prosecution to follow the mandatory requirements to be followed at the time of the seizure and the non production of the seizure list, the forwarding note as well as the requisition letter would create serious doubt in the genuineness of the prosecution case.

8. I am of the considered view that the above infirmities are fatal and would affect the credibility of the prosecution case. When violations of the nature discussed Crl.R.P.No.834 of 2006 :

9. : above are found in the procedure adopted by the prosecuting agency, the benefit of doubt is to be extended to the accused. For all the aforesaid reasons, I am of the considered view that the conviction and sentence passed against the petitioner is liable to be set aside. He is entitled to an order of acquittal for the offence under section 55(a) Abkari Act. In the result, the conviction and sentence passed by the courts below against the petitioner is hereby set aside. He is

acquitted of the offence under section 55(a) of the Abkari Act and he is set at liberty. The bail bond executed by him shall stand cancelled. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE. Bb [True copy] P.A to Judge