

Prasanth Vs. State of Kerala

Prasanth Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/718381

Court : Kerala

Decided On : Jan-23-2002

Reported in : 2002CriLJ1942

Judge : G. Sasidharan, J.

Acts : Kerala Akbari Act, 1077 - Sections 8(1), 8(2) and 55

Appeal No. : Crl. M.C. No. 5333 of 2001

Appellant : Prasanth

Respondent : State of Kerala

Advocate for Def. : K. Ravikumar, Public Prosecutor

Advocate for Pet/Ap. : Thomas Abraham and; P.Y. Ahammed Physi, Advs.

Disposition : Petition allowed

Judgement :

G. Sasidharan, J.

1. The petitioners are accused in Excise Crime No. 12 of 2001 of Neyyattinkara Excise Range. On 15.6.2001 at about 9 p.m. petitioners were going in a scooter and the excise party intercepted and seized 12 bottles of beer. Crime and occurrence report was filed in the Court alleging that they committed the

offences under Sections 8(1) and (2), 55(a) and 67B of the Abkari Act. Annexure-1 is the crime and occurrence report filed in Court by the Assistant Excise Inspector, Neyyattinkara Range.

2. According to the petitioners, the crime and occurrence report and the further proceedings in the Court in pursuance of that have to be quashed for the reason that the allegations against them will not constitute commission of the offences mentioned in the crime and occurrence report. The learned counsel appearing for the petitioners would submit that the bottles of beer were purchased by the petitioners and their three friends together from the shop run by the Beverages Corporation. The statement in the petition is that the 12 bottles of beer purchased by the petitioners and three others were being carried by the second petitioner in a single bag when he was riding pillion in the scooter.

3. The allegation in the crime and occurrence report that the petitioners committed the offences under Sections 8(1) and (2) of the Abkari Act cannot be sustained for the reason that possessing and carrying beer is not made an offence under the above section of the Act. In respect of the allegation that the petitioners committed the offence punishable under Section 55(a) of the Abkari Act the allegation is that the second petitioner when he was riding pillion in the scooter was carrying in a bag 12 bottles of beer i.e., 7.8 litres of beer. Government of Kerala, by G.O. (P) No. 22/99/TD dated 5th February, 1999, in exercise of the powers conferred by Sections 10 and 30 of the Abkari Act, fixed the quantity of beer one can possess. As per the above notification, no person shall have in his possession or shall transport exceeding 4.5 litres of beer. Possessing or transporting beer the quantity of which is 4.5 litres or less than that will not become an offence under Section 55(a) of the Abkari Act.

4. The submission made for and on behalf of the petitioners is that beer was being carried by both of them in the scooter and since each of them can possess or transport 4.5 litres of beer the total quantity of beer they were having in their possession is within the permissible limits. On going through the Annexure-1 crime occurrence report it is seen that both the petitioners are alleged to have committed the offence punishable under Section 55(a) of the Abkari Act. That would indicate

that according to the officer, who gave crime and occurrence report, both of them were possessing and transporting beer. If that be so, the total quantity of beer both of them could possess and transport comes upto 9 litres of beer. If the allegation was that one of the petitioners committed the offence under Section 55(a) of the Abkari Act for the reason that he was possessing and transporting the entire quantity of beer seized by the excise officers, then there would have been no allegation against the other person that he committed the offence. Since the allegation is that both of them committed the offences the total quantity of beer both of them can possess and transport can be upto 9 of beer and since the allegation here is that there was only 7.8 litres of beer the statements in the crime and occurrence report will not prima facie show that the petitioners committed the offence under that section. Section 67B of the Abkari Act mentioned in the crime and occurrence report is not a penal provision and that it is a provision which gives power of confiscation to the abkari officers. For the above reasons, Annexure-1 crime and occurrence report and the proceedings in pursuance of that can be quashed.

This petition is allowed on quashing Annexure-1 and all proceedings initiated in pursuance of the same.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com