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Hassanar Vs. State of Kerala

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Court : Kerala

Decided On : Jan-22-2008

Reported in : 2008(1)KLJ917

Judge : V. Ramkumar, J.

Acts : Abkari Act - Sections 55 and 64A

Appeal No. : Crl M.C. No. 2860 of 2007

Appellant : Hassanar

Respondent : State of Kerala

Advocate for Def. : K.S. Sivakumar, PP

Advocate for Pet/Ap. : T.B. Shajimon, Adv.

Judgement :
ORDER

V. Ramkumar, J.

1. Petitioner, who is the sole accused in CR No. 14/99 of Kumbla Excise Range and now pending as L.P.C. No. 84/2004 on the file of the Judicial First Class Magistrate, Kasaragod, seek to quash Annexure A2 final report and all further proceedings pending before the Magistrate.

2. The case of the prosecution is that at about 1.00 p.m. on 27-06-99 two unidentified persons were seen by the Excise Inspector, Kumbla riding a Yamaha motorcycle bearing Registration No. KL 14 A 4790 and on seeing the Excise party they stopped the motorcycle and made good their escape. But, on searching the motorcycle, the Excise Inspector found 24 bottles each containing 180 ml of Indian made foreign liquor and 27 bottles each containing 375 ml of Indian made foreign liquor and the accused have thereby committed offences punishable under Sections 55(a) and 64A of the Abkari Act.

3. Admittedly, the prosecution has no case that the petitioner was one among the two unidentified persons who were seen riding the motorcycle in question. The petitioner is sought to be implicated on the ground that subsequent investigation revealed that he is the transferee of the motorcycle from the registered owner one Mr. Hannifa Puthur who is stated to be abroad. Section 64A of the Abkari Act read as follows:

64A. Penalty for allowing land, building, room etc. for manufacture, sale of storing for male of liquor or intoxicating drug: Notwithstanding anything contained in this Act, or in any other law for the time being in force, any owner or occupier or person having control of, any land, building, room, space or enclosure for manufacture sale or storing for sale of liquor or intoxicating drug in contravention of this Act or of any rule or order made thereunder or of any licence or permit obtained under this Act shall be punishable with fine which shall not less than twenty-five thousand rupees unless he proves to the satisfaction of the court that all due and reasonable precautions were taken by him to prevent such use.

4. Section 64A of the act can be attracted only if it is shown that the person in question was having control of any land, building, room, space or enclosure. Section 64A does not take in any vehicle. The words 'space' or 'enclosure' mentioned in the Section cannot also include a vehicle. Admittedly, the contraband liquor was carried in the motorcycle and the prosecution has no case that the petitioner was one among the two riders of the motorcycle. The petitioner can be roped in under Section 55(a) of the Act only if it could be shown that he was having control over the vehicle in question. Since Section 64A of the Abkari Act

does not take in any vehicle, the prosecution of the petitioner under Section 64A also is unsustainable. I am fortified in this conclusion the decision reported in Rajan v. Excise Inspector : 2004(2)KLT430 .

5. The entire proceedings before the J.F.C.M., Kasaragod in C.P. No. 309/01 and in C.P. No. 14/99 shall stand quashed. The Crl. M.C. is disposed of as above.

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