

**Rajan Vs. Excise Inspector**

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**Court :** Kerala

**Decided On :** Mar-12-2004

**Reported in :** 2004CriLJ2991; 2004(2)KLT430

**Judge :** J.B. Koshy, J.

**Acts :** Kerala Abkari Act, 1077 - Sections 64A

**Appeal No. :** Crl. M.C. No. 9383 of 2002

**Appellant :** Rajan

**Respondent :** Excise Inspector

**Advocate for Def. :** Sujith Mathew Jose, Public Prosecutor

**Advocate for Pet/Ap. :** M. Ramesh Chander and; K.A. Sangeetha, Advs.

**Disposition :** Criminal miscellaneous complaint allowed

**Judgement :**

ORDER

**J.B. Koshy, J.**

1. Petitioner herein is the second accused in C.P. No. 173 of 2002, on the file of the Judicial First Class Magistrate Court, Kasaragod. He along with another accused was charge sheeted for offence punishable under Sections 55(a) and

64A of the Abkari Act. The allegation as seen from Annexure A2 charge sheet is that on 6.8.2000 the first accused was transporting packets of arrack from Karnataka State. The total number of packets transporting by the first accused was found 200. The petitioner was arrayed as second accused on the ground that petitioner is the registered owner of the Chetak scooter, bearing No. KL-14/2650. According to the petitioner, as can be seen from Annexure A1, he became the registered owner only after the alleged offence. Whatever may be that, his further contention is that charge against him was framed under Section 64A. Section 64A reads as follows:

'64A. Penalty for allowing land, building, room, etc. for manufacturing, sale or storing for sale 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, permits any person to use such 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 be 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.'

A plain reading of Section 64A would show that it will attract only if any land, building, room, space or enclosure owned by a person is used for manufacture, sale or storing for sale of liquor or intoxicating drug. Section 64A is not attracted merely because accused is the registered owner of the vehicle. The word 'place' is defined under Section 3(21) of the Act as follows:

'(21) Place:- 'Place' includes also a house, building, shop (tent, booth, raft, vehicle and vessel;'

But, place is not mentioned in the section. Of course, first accused was charged for offence under Section 55(a) for transporting or importing intoxicating liquor. But Section 64A is applicable only if land or space or enclosure is allowed to be used for manufacturing, sale or storing for sale of liquor and not for transporting. The prosecution has no case that petitioner was travelling in the vehicle at that time or

abetting the above offence. The only allegation is that he was registered owner of the vehicle. There is no other allegation against him in the F.I.R. He was not even charge sheeted for abetting the offence.

2. In the above circumstances, charges under Section 64A framed on second accused is not maintainable. Therefore, Annexure A2 charge sheet under Section 64A against the second accused in C.P. No. 173 of 2002 is quashed. The Magistrate Court will be free to proceed with charges against accused No. 1 according to law.

The Crl.M.C. is allowed.

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