Sabu Vs. State of Kerala

Sabu Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/721909

Court : Kerala

Decided On : Feb-10-2003

Reported in : 2003(2)KLT173

Judge : J.B. Koshy, J.

Acts : Kerala Abkari Act, 1077 - Sections 55

Appeal No. : Crl. A. No. 808 of 2002

Appellant : Sabu

Respondent : State of Kerala

Advocate for Def. : K.G. Bhaskaran, Public Prosecutor

Advocate for Pet/Ap. : C.C. Thomas,; M.G. Karthikeyan,; Nireesh Mathew,;

Disposition : Appeal partly allowed

Judgement :

J.B. Koshy, J.

1. Appellants were accused in Sessions Case No. 329 of 2000 on the file of the Additional District Court (Fast Track Court - Adhoc), Kottayam for having committed offences under Section 55(a) of the Kerala Abkari Act. The allegation was that accused persons were found transporting 13.9 litres of Indian made

foreign liquor in an autorickshaw bearing registration No. KL-5/3037 on 23.12.1999 in contravention of the provisions of the Abkari Act. Defence of the accused was total denial. However, from the evidence available, the court found that the accused were guilty of the offence. The contention of the respondent is that even if the allegations are proved, the offence will come only under Section 63 of the Abkari Act. From the evidence available in this case, it cannot be disputed that the appellants carried 13.6 litres of liquor in the autorickshaw. As per Government orders issued under the Abkari Act at that time only 1.5 litres of liquor can be possessed and transported by a person except under licence. Even if the contention that the three persons involved were carrying 1.5 litres of liquor each is accepted also, they were carrying above the permissible limit. The first information statement and recovery mahazar Exts. P1, P2 oral evidence show that there was a function of house warming in the first appellant's house and this liquor was purchased from the Kerala State Bewerages Corporation for the purpose of the party in connection with the house warming function of the first accused. It was transported through the autorikshaw. (It is submitted that petitioners are not very rich so as to afford a car or taxi car for transportation of the same). Admittedly, they were carrying excess quantity of liquor. But, Exts.P1 and P2 show that the liquor was purchased from Kerala State Bewerages Corporation and they were having bills for the same. Recovery mahazar specifically states about the same. The above liquor was also not intended for subsequent sale.

2. Heading of Section 55(a) is 'For illegal import, etc.'. Section 55(a) is as follows:

'55. For illegal import, etc.:- Whoever in contravention of this Act or of any rule or order made under this Act.

(a) imports, exports, transports, transits or possesses liquor or any intoxicating drug; or

(h) manufactures liquor or any intoxicating drug;

(c) omitted;

(d) taps or causes to be tapped any toddy-producing tree; or

(e) draws or causes to be drawn toddy from any tree; or

(f) constructs or works any distillery, brewery, winery or other manufactory in which liquor is manufactured; or

(g) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor other than toddy or any intoxicating drug; or

(h) bottles any liquor for purposes of sale;

(i) sells or stores for sale liquor or any intoxicating drug; shall be punishable.

(1) for any offence, other than an offence falling under Clause (d) or Clause (e), with imprisonment for a term which may extend to ten years and with fine which shall not be less than rupees one lakh; and

(2) for an offence falling under Clause (d) or Clause (e), with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.

Explanation:- For the purpose of this section and Section 64A, 'intoxicating drug' means any intoxicating substance, other than a narcotic drug or psychotropic substance regulated by the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), which the Government may by notification declare to be an intoxicating drug'.

Therefore, it can be seen that fine amount is minimum Rs. One lakh. The punishment itself suggests that Section 55(a) is intended for very serious offences.

3. As stated in Maxwell 'the headings prefixed to sections or sets of sections in some modern Statutes are regarded as preambles to those sections. They cannot control the plain words of the Statute, but they may explain ambiguous words'. (See: Page 11 of Maxwell on the Interpretation of Statutes - 12th edition). The above sentence was quoted with approval by the Apex Court in Bhinka and Ors. v. Charan Singh (AIR 1959 SC 960 at page 966). Now, it is settled law that headings or titles prefixed to sections or group of sections can be referred to interpret the

Act of legislation. (Director of Public Prosecutions v. Schildkamo (1969 (3) All. ER 1640 - House of Lords). Even though heading cannot cut down the plain meaning of the section, in case of doubt or ambiguity, the heading or sub-heading can be looked into.

4. Section 55(a) is a penal provision. Statute imposing criminal or other penalty shall normally be construed narrowly in favour of the person proceeded against especially when the punishment provided is monstrous. This rule has been stated by Mahajan, C.J. as follows:

'If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature'. (Tolaram Relumal and Anr. v. State of Bombay (AIR 1954 SC 496)).

On the principle that penal provisions are strictly construed it was held by the Apex Court that 'contravention of conditions of a licence granted under a Statutory Order cannot be construed as contravention of the Order resulting in penal consequences,unless the order itself provides that the licensee shall comply with all the conditions of the licence'. (East India Commercial Co. Ltd., Calcutta and Anr. v. Collector of Customs (AIR 1962 SC 1893)) (See also: W.H. King v. Republic of India and Another ((AIR 1952 SC 156 at page 158)). Applying the above principle of strict interpretation, penal provisions for contravention of rules made under an Act cannot be construed and applied for contravention of the Act as held by the Supreme Court in Becker Gry and Co. Ltd. and Ors. v. Union of India and Anr. ((1970) 1 SCC352). (See also: Tolaram Relumal and Anr. v. State of Bombay (AIR 1954 SC 496)). But, the object of the Act which is to be interpreted also shall be looked into. If a personsells or possesses illegal liquor(which may lead to liquor tragedies) or one manufactures or imports liquor without licence and proper contract or sells liquor illegally without licence causing heavy financial burden on the State by avoidance of tax etc., offence is very serious and punishment of a minimum fine of Rs. One lakh may be justifiable.

What is the offence here? Accused purchased liquor from Government owned Kerala State Sewerages Corporation. They were having bills. There was a ceremony in the house. It was intended for that purpose. It was not for resale. Is this an offence equated with manufacture or sale or possession of illicit or illegal liquor. If the interpretation in such a way, if a person purchases two bottles of liquor (of 1 litre bottle) from the Kerala State Bewerages Corporation with bills and transports to his house for a birthday party, he has to pay a minimum fine of Rs. One lakh and sentence upto ten years imprisonment. That will lead to absurd result which will encourage corruption by law enforcing agencies. If such an interpretation is accepted, officers of the Kerala State Sewerage Corporation also will be guilty and punishable for such fine of minimum Rs. One lakh as they have sold excess quantity (1.5 litre) to a single person by a single bill in view of Section 55(1). If interpretation as suggested by the Public Prosecutor is accepted, if a foreign tourist who stays in a hotel where there is no bar keeps three bottles of beer for his own consumption, will be liable to pay fine of minimum of Rs. One lakh. Therefore, considering the objects, heading of the section and principle of interpretation of penal law, a reasonable interpretation has to be taken. Sentence of imprisonment upto ten years or minimum fine of Rs. One lakh itself suggest that the section is not intended to trival offence like this. Monstrous sentence, the rigour of criminal provisions in the Statute itself drive the court to take an equitable and fair interpretation. (See theobservations in Sanjay Dutt v. State through CBI. Bombay (JT 1994 (5) SC 540 atpage 557 to 561)).

5. There is no case for the prosecution that accused were transporting illicit liquor or they have illegally imported the liquor or the liquor was adulterated or they have manufactured the liquor or liquor was transported for illegal second sale. Therefore, the words, import, export, transport, transit or possession of liquor read with heading to the section show that it is applicable to illegal liquors. Here, the liquor was purchased from the Kerala State Sewerages Corporation for own consumption and there is no question of any illegal import or transporting or possessing illicit liquor. The only offence is that they were in possession of excess quantity of liquor, permissible under law though purchased legally from the Kerala State Bewerages Corporation.

6. In the above circumstances, the offence will come only under Section 63 of the Abkari Act where maximum punishment is fine of Rs. 5,000/- or imprisonment for a term which may extend to two years or both. Here, even going by Exts. P1 and P2, appellants have purchased liquor from the Kerala State Bewerages Corporation Limited with bill for the purpose of a party in connection with the housewarming ceremony of the first accused and they were transporting the same to the house. This offence will come only under Section 63 of the Act. Therefore, I am of the view that all the three persons are liable for the maximum fine payable under Section 63 of the Abkari Act.

7. In the above circumstances, conviction and sentence passed under Section 55(a) of the Abkari Act are set aside. They are convicted under Section 63 of the Abkari Act and I impose the sentence of fine of Rs. 5,000/- each to be paid by all the three accused within one month from today. If any of them fails to pay the fine within the time prescribed, he has to undergo default sentence of simple imprisonment of one month.

The appeal is allowed to the above extent.