

Ammini Vs. State of Kerala

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Court : Kerala

Decided On : Mar-03-1981

Reported in : 1981CriLJ1170

Judge : U.L. Bhat, J.

Appellant : Ammini

Respondent : State of Kerala

Judgement :

ORDER

U.L. Bhat, J.

1. The revision petitioner was convicted in C. C. No. 59 of 1977 by the Chief Judicial Magistrate, Trichur, for offence under Section 55(g) of the Abkari Act and sentenced to undergo R.I. for one year and to pay a fine of Rs. 2000/- and in default to undergo S.I. for three months. In Criminal Appeal No. 3 of 1978 the learned Sessions Judge, Trichur. confirmed the conviction but reduced the sentence to S.I. for two months and a fine of Rs. 300/-, in default of which she was directed to undergo S. I. for two weeks. She was convicted because she was found handling wash in a not buried in the ground of her compound and it was found to be wash prepared for illicit distillation of arrack.

2. The only contention urged by the learned Counsel for the petitioner is that this is a fit case for not awarding any sentence at all but to apply the provisions of the Probation Act. This request is opposed by the Prosecutor.

3. It is unfortunate that the Chief Judicial Magistrate did not deem it fit to call for a report from the Probation Officer. However, the learned Sessions Judge called for such a report. I have gone through the report and find it extremely favourable to the revision petitioner. The Probation Officer has reported that revision petitioner's husband is a chronic patient and she has seven children and she is the sole breadwinner of the family which is poor. Her relations save a food account of her and are sympathetic and anxious to save her. The neighbours also appear to be favourable. The Officer also reported the she appears penitent, and promises to behave well in future. His own finding is that at present she has completely discarded illicit distillation. On this basis he recommended her being dealt with under Section 4 of the Probation Act.

4. The learned Chief Judicial Magistrate declined to apply the provision's of the Probation Act to her on the ground that she has previous conviction. The same reason weighed with the learned Sessions Judge also in declining her re-quest for probation treatment, This reason is seriously challenged by the learned Counsel for the revision petitioner. On a reading of the judgments of the two courts below, it is evident and apparent that but for the so-called previous conviction she would have received probation treatment. It is true that the complaint filed by the concerned Excise Officer mentions that 'she has previous conviction for an offence under the Abkari Act. But I do not find a copy of the iudgment as having been filed nor has the fingerprint slip been produced. Jail records were also not produced. Thus, there, is no material before the court 1o show that she has a previous conviction. She was not even auestioned about the so-called previous conviction nor had she an opportunity to deny it either. Even in the appellate court or even: in this Court no attempt was made to substantiate the allegation of previous conviction. I find that the two courts below erred in proceeding on the basis that she had such a previous conviction.

5. It is true that the offence involved is one for which the statute prescribes a minimum punishment of imprisonment and fine, which can be relaxed only in the presence of special and adequate reasons. However, the fact that the statute prescribes a stringent or a minimum punishment for an offence, does not by itself mean that the operation of the probation principles is contra-indicated. The Abkari Act does not contain any provision prohibiting the use of the probation principles to an offender convicted under Section 55 of the Act. as we find in the Prevention of Food Adulteration Act, 1954 in the case of offenders above the age of 18 years or as in the case of certain offences under the Prevention of Corruption Act or the Suppression of Immoral Traffic in Women and Girls Act, as provided in Section 13 of the Probation of Offender's Act. Therefore there can be no doubt about the jurisdiction, the power and competency of this Court or the lower courts to apply, in appropriate cases, the probation treatment to persons convicted under Section 55 (g) of the Abkari Act. Of course, courts must always bear in mind that the offences rendered punishable under the Abkari Act are serious offences not only involving revenue of the State but also involving public health. This background must be present in the mind of the court when assessing whether probation treatment could be given to a particular offender.

6. I have already referred to the allegations against the revision petitioner which were accepted by the two courts below. The prosecution has no case that she has a distillery operated by her or that she is a link in a substantial chain working against the provisions of the Abkari Act. The material before the court shows that she is the only breadwinner of a large family consisting of a number of children, her husband being chronically sick. There is nothing to suspect the bona fides of the recommendations made by the Probation Officer also. Under, these circumstances I find that this is a fit case where the courts below ought to have exercised the discretion under the provisions of the Probation Act. since it is not shown that she has a previous conviction. Had it been shown that she has a previous conviction, the matter would have taken an entirely different complexion notwithstanding the favourable circumstances referred to above.

7. In the result, I set aside the sentence imposed -on the revision petitioner. Instead of sentencing her at once to any punishment I direct that she be released

on entering a bond with two sureties for a sum of Rs, 3000/- to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour. I further direct that during this period she will be under supervision of the District. Probation Officer, Trichur. The revision petitioner will also execute a bond with two sureties undertaking to meet the Probation Officer once every month. The bonds referred to above will be executed, to the satisfaction of the Chief Judicial Magistrate, Trichur, The revision petition is allowed to this extent.

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