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Ouseph Vs. State of Kerala

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Court : Kerala

Decided On : Sep-16-1980

Reported in : 1980CriLJ1214

Judge : George Vadakkel, J.

Appellant : Ouseph

Respondent : State of Kerala

Judgement :
ORDER

George Vadakkel, J.

1. The Judicial Magistrate of the Second Class I, Trichur, by his judgment found that the petitioner herein is guilty of the offence punishable under Section 55 (g) of the Abkari Act, 1077. This was on the basis of his finding that the petitioner herein was. found engaged in illicit manufacture of arrack. A patrol party on duty detected the offence and the petitioner herein was charged with the offence aforesaid under Section 55 (g) of the Act. On the evidence adduced the learned Judicial Magistrate of the Second Class found that the accused is guilty thereunder and convicted him for the same. The accused-petitioner was sentenced to suffer simple imprisonment for six months and to pay a fine of Rs. 1000/-and in default of payment of fine to suffer simple imprisonment for two months-The findings of fact as aforesaid as also the conviction and sentence were confirmed on appeal by the Chief Judicial

Magistrate, Trichur. The accused petitioner herein preferred a revision before the learned Sessions Judge, Trichur, who dismissed the same. The petitioner has come up to this Court invoking Section 482 of the Code of Criminal Procedure, 1973.

2. The learned Counsel relying on the decision in K.L. Subhayya v. State of Karnataka : 1979 CriLJ651 submits that in so far as the requirements of Section 31 of the Abkari Act, 1077 have not been complied with the proceedings before the lower courts are vitiated. The Supreme Court decision aforesaid concerned Section 54 of the Mysore Excise Act 1966, corresponding to Section 31 aforesaid. Under Section 31 in urgent cases where it may not be possible for the officer concerned to get a warrant from the authority mentioned in Section 30 of the Act, he may after recording his reasons and the grounds of his belief, enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under the Abkari Act, 1077. 1 do not think either Section 30 or Section 31 of the aforesaid Act is attracted to the instant case. The aforesaid provisions envisage situations where a search is to be conducted by the concerned authority upon a warrant issued by a Magistrate. In my view Section 34 of the Act governed the instant case Under that provision offenders can be arrested and contraband liquor, vessels etc. can be seized without warrant. This is what has been done in the instant case. The petrol party detected an offence being committed and therefore the utensils and other materials etc. mentioned in Section 55 (g) of the Act were seized. The ease on hand does not fall within the provisions whereunder a search warrant is necessary tor making a search, In that view 1 do not think that the decision of the Supreme Court mentioned above has any application to the instant case.

3. It was next contended that the Sessions Court having in the first instance exercised its jurisdiction under Section 374(3) of the Code by taking on its file the appeal, filed against the learned Magistrate's judgment, it has no jurisdiction to entertain the revision preferred from that appeal which the Sessions Court made over to the Chief Judicial Magistrate who decided the appeal. This forgets that it is the accused-petitioner who invited the revisional jurisdiction of the Sessions Court. It is not in these proceedings under Section 482 of the Code that illegality, if any,

in such a procedure is to be examined.

4. Section 482 is to be sparingly invoked and the guidelines in that behalf have been laid down in R.P. Kapur v. State of Punjab : 1960 CriLJ1239 . It is not contended that this Court's inherent jurisdiction thereunder is necessary to give effect to any order passed under the Code. No doubt the learned Counsel for the petitioner has a case that that jurisdiction is invoked to prevent abuse of the process of the lower courts. This is on the basis that the search is bad in so far as the concerned officer has not complied with the requirements of Section 31 of the Act. I have already dealt with the contention as aforesaid. Even otherwise I do not understand how an illegal search would take away the jurisdiction of the trial court to try the case, though perhaps that may vitiate the whole procedure. The learned Counsel for the petitioner then relied on the clause in Section 482 of the Code which enables this Court to exercise its inherent jurisdiction when this Court is satisfied that such exercise is necessary 'otherwise to secure the ends of justice'. The consideration in this regard should be on the basis of the findings of fact entered by the lower court and on the premise that the petitioner is guilty of the offence under Section 55 (g) of the Act. It cannot be said that even if there is any illegality or irregularity in the procedure followed, the same would enable him to invoke my jurisdiction under Section 482 of the Code in order to secure the ends of justice. It appears to me that if I were to invoke the inherent jurisdiction thereunder in such a case, it would be an abuse of the process of this Court.

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