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Kunhikannan Vs. State

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Court : Kerala

Decided On : Jun-02-2006

Reported in : 2006(4)KLT469

Judge : K.A. Abdul Gafoor, J.

Acts : Abkari Act, 1077 - Sections 55

Appeal No. : Crl. A. No. 1064 of 2002

Appellant : Kunhikannan

Respondent : State

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : M. Sasindran and; M.B. Prajith, Advs.

Judgement :

K.A. Abdul Gafoor, J.

1. The appellant/accused stands convicted for the offence punishable under Section 55(a) of the Abkari Act and he is sentenced to undergo rigorous imprisonment for a term of 2 years and to pay a fine of Rs. 1 lakh with a default sentence to undergo rigorous imprisonment for six months. This is under challenge in this appeal.

2. According to the prosecution case, at about 9.55 a.m. on 20.6.1998, PWs. 1 and 2 while on patrol duty on getting information about the transaction of banned arrack, found the accused in suspicious circumstances on the public road carrying a big shopper (M.O. 1). He was apprehended and questioned. It was found that the big shopper (M.O. 1) in his hand contained 48 packets of Karnataka made arrack measuring 100 ml. each, which was banned in Kerala State. Accordingly the appellant/accused was arrested and Ext. P1 seizure mahazar was prepared. It is recorded therein that six packets from out of 48 were opened and poured in two bottles of 375 ml. The contents of three packets each were poured into each of the said bottles and were sealed. The entire things were seized and the seized articles were taken to the police station. Thereupon Ext. P3 FIR was registered and the accused was produced in court The said samples were sent to the Chemical Analysts. Ext. P6 is his report. It reveals that the sample contained ethyl alcohol 35.15% by volume. In the light of the evidence given by PW-5 Detecting Officer and on the basis of Ext. P1 seizure mahazar, Ext. P3 F.I.R. and Ext. P6 report of Chemical Analysis, the accused was found guilty of being in possession of 48 packets of 100 ml. arrack, which was seized as per Ext. Pl seizure mahazar. Accordingly, he was convicted and sentenced as mentioned above.

3. It is submitted that Ext. Pl seizure mahazar reveals that samples were taken in two bottles of 350 ml. capacity. This is also mentioned in Ext. P4 property list. It is submitted by the learned Counsel that in FIR the bottle is mentioned as of 375 ml. capacity. Therefore, it is not conclusively proved that the contraband alleged had been seized from the accused. It is further submitted that the alleged contraband had been produced before the court only on 24.6.1998 whereas the alleged occurrence was on 20.6.1998. There was a delay of 4 days. It is not properly explained. In support of this contention a decision reported in Narayani v. Excise Inspector 2002 (3) KLT 725 and Alex v. State 2003 (1) KLT SN 9 Case. No. 12 are relied on. Therefore, it is submitted that the appellant/accused is entitled for acquittal.

4. It is true, as submitted the learned Counsel, the seizure mahazar Ext. P1 and the property list Ext. P4 mention about the capacity of the bottles in which samples were taken, taken, as 350ml. But it is evident from Ext. P3 FIR prepared by PW-5

that the bottles in which samples were taken were of 375ml. capacity. The bottles containing the samples taken produced before the court were also 375ml. capacity. Therefore, it tallies in material particulars with that mentioned in Ext. P3 FIR. Merely because of the clerical error with respect to the capacity of the bottles in the property list and seizure mahazar, the accused cannot cash out of that discrepancy to get acquittal. The bottles produced before the court were also of the same capacity as mentioned in the FIR. PW-1 has also testified that the bottles had the capacity of 375 ml. each. Therefore it cannot be said that the samples are not out of the articles seized from the accused.

5. Of course, there is a delay of 4 days in producing the articles before the court. The decision reported in Narayani v. Excise Inspector 2002 (3) KLT 725 reveals a delay of one month. But the case of the Detecting Officer then was that he produced the articles on the next day itself. But in the case on hand, the detection was on 20.6.1998. Ext. P3 FIR reached the court on the same day and the FIR revealed about the seizure of the said quantity of contraband and the sampling. Therefore the delay of 4 days in this case in producing the articles cannot be said to prejudice the accused on any count. He had been really arrested and produced before the court on 20.6.1998 itself from the scene of occurrence. Therefore, the decision in Narayani's case 2002 (3) KLT 725 cannot be applied to the fact-frame of this case. Equally so is the decision in Alex v. State 2003 (1) KLT SN 9 Case No. 12. Therefore, there is no reason for reversing the conviction.

6. Anyhow, the sentence of imprisonment for two years is excessive and it is reduced to six months, especially when he is liable to pay a fine of Rs. 1 lakh which is the minimum in terms of the statute prescribing penalty.

Appeal is disposed of as above.

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