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Chami Vs. Excise Inspector

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Court : Kerala

Decided On : Dec-14-2005

Reported in : 2006(1)KLT511

Judge : J.B. Koshy and; K.R. Udayabhanu, JJ.

Acts : Abkari Act, 1077- Sections 3(8), 27, 29, 29(2), 30, 31, 32, 36, 50, 55, 57, 57A, 57A(1), 57A(3) and 57B; Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 2 and 22; Prevention of Food Adulteration Act, 1954 - Sections 2; Indian Penal Code (IPC), 1860 - Sections 272, 273 and 320; Code of Criminal Procedure (CrPC) ; Poisons Act, 1919 - Sections 2 and 3; Drugs and Cosmetics Act, 1940 - Sections 26A; Kerala Abkari Shops Disposal Rules, 2002 - Rules 6, 8 and 9(2); The Kerala Poisons Rules, 1996 - Rule 2; Drugs and Cosmetics Rules

Appeal No. : B.A. No. 5825 of 2005

Appellant : Chami

Respondent : Excise Inspector

Advocate for Def. : Sujith Mathew Jose, Public Prosecutor

Advocate for Pet/Ap. : T.G. Rajendran, Adv.

Judgement :
ORDER

J.B. Koshy, J.

1. This Bail Application was referred by learned single Judge (Justice K. Padmanabhan Nair) expressing doubts in certain observations made by another learned Single Judge in Roshy v. State of Kerala : 2005(3)KLT796 . Petitioner in this bail application is the first accused in CR.No. 39 of 2005 of Excise Range Office, Ottappalam, registered under Sections 57(a), 57A(1)(iii) and 57A(3) of the Abkari Act 1 of 1077 (in short 'the Act') and Section 22 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act). At about 3.30 p.m. on 2.9.2005, the Preventive Officer, Excise Enforcement and Anti-narcotic Special Squad along with party went to the Toddy Shop No. 33/05-06 of Ottappalam Excise Range, to which the petitioner was the licensee, and took sample in accordance with Rule 8 of the Kerala Abkari Shops Disposal Rules, 2002 from the toddy stored in the toddy shop for sale and it was sent for analysis. On examination, it was found that Diazepam, a psychotropic substance was added to the toddy stored for sale. On getting the result from the Chemical Examiner, the case was registered against the petitioner. According to the petitioner, Section 57A of the Abkari Act will be attracted only if the substance added is notified as noxious. It is the contention of the petitioner that Diazepam is not a noxious substance. It is not declared by the Government by notification that Diazepam is noxious in terms of Section 29(2)(k) of the Abkari Act. If Section 57A is omitted from the charges, the offence alleged to have been committed is only bailable and, therefore, he is entitled to anticipatory bail (pre-arrest bail). In support of the above contention, learned Counsel for the petitioner relied on the Roshy's case (supra) and argued that Diazepam cannot be treated as noxious substance. It was further stated that sample was taken for chemical analysis without permission from the court and no independent responsible inhabitants of the locality were cited as witnesses and, therefore, sampling was also not done in accordance with law. In Roshy's case (supra) it was observed that Chloral Hydrate and Diazepam are not noxious substances. Considering various decisions and provisions of the Act, the learned Single Judge was of the opinion that Roshy's case (supra) requires reconsideration. Since these are matters which are arising for consideration in a large number of cases every day, learned Judge was of the opinion that correctness of the principles laid down in Roshy's case (supra) is to be considered by a Division Bench. During the

pendency of this anticipatory bail application, the petitioner was arrested . Therefore, as far as this case is concerned, the matter has become infructuous. However, since the matter is referred to Division Bench for consideration of a question of law and reported decision in Roshy's case (supra) may affect many other pending cases, both sides argued on merits.

2. Section 3(8) of the Abkari Act (Act 1 of 1077) defines 'Toddy' as follows:

3.(8) Toddy:- 'Toddy' means fermented or unfermented juice drawn from a coconut, palmyra, date or any other kind of palm tree;

Clause A.29.01 of Appendix B to the Rules made under the Prevention of Food Adulteration Act, 1954 (in short 'PFA Act'), defines Toddy as follows:

A.29.01. Toddy: Toddy means the sap from coconut, date, toddy palm tree or any other kind of palm tree which has undergone alcoholic fermentation. It shall be white cloudy in appearance with sediments on storage and shall possess characteristic flavour derived from the sap and fermentation without addition of extraneous alcohol. It shall be free from added colouring matter, dirt, other foreign matter or any other ingredient injurious to health. [It shall also be free from chloral hydrate, paraldehyde, sedative, tranquilizer and artificial sweetener].

It shall also conform to the following standards, namely:--

(a) Alcoholic content Not less than 5 per cent.(v/v).(b) Total acids as tartaric acid (expressed in Not more than 400 gramsterms of 100 litres of absolute alcohol)(c) Volatile acid as acetic acids (expressed in Not more than 100 grams.terms of 100 litres of absolute alcohol)

Rule 9(2) of Chapter VIII of The Kerala Abkari Shops Disposal Rules, 2002, regarding special conditions applicable to licensees of the privilege of vending toddy in toddy shops reads as follows:

9(2) No toddy other than that drawn from the Coconut, Palmyrah or Choondapana palms shall be sold by the licensees. All toddy kept or offered for sale should be of good quality and un-adulterated. Nothing shall be added to it to increase its

intoxicating power or for any other purpose. The ethyl alcohol content of toddy kept or offered for sale drawn from Coconut, Palmyrah and Choondapana palms should not exceed 8.1% v/v: 5.2% v/v and 5.9% v/v respectively.

Section 57 of the Act makes it an offence if holder of a licence mixes the toddy with any foreign material. Section 57(a) reads as follows:

57. For adulteration, etc., by licensed vendor or manufacturer: -- Whoever being the holder of a licence for the sale or manufacture of liquor or of any intoxicating drug under this Act.(a) mixes or permits to be mixed with the liquor or intoxicating drug, sold or manufactured by him, [any drug, other than a noxious drug] or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited [other than an article which the Government shall deem to be noxious] by any rule made under Section 29, Clause (k), when such admixture shall not amount to the offence of adulteration under (Section 272 of the Indian Penal Code];

Section 57A deals with adulteration of liquor or intoxicating drug with noxious substances. Section 57A(1) reads as follows:

57A. For adulteration of liquor or intoxicating drug with noxious substances, etc: -- (1) Whoever mixes or permits to be mixed any noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings, with any liquor or intoxicating drug shall, on conviction, be punishable-

(i) if, as a result of such act, grievous hurt is caused to any person, with imprisonment for a term which shall not be less than two years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

(ii) if, as a result of such act, death is caused to any person, with death or imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and with fine which may extend to fifty thousand rupees;

(iii) in any other case, with imprisonment for a term which shall not be less than one year, but which may extend to ten years, and with fine which may extend to twenty-five thousand rupees.

Explanation:-- For the purpose of this section and Section 57B, the expression 'grievous hurt' shall have the same meaning as in Section 320 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

So, Section 57A will be applicable only if the toddy is adulterated with noxious substance or any substance which is likely to endanger human life or to cause grievous hurt to human beings. The question is whether Diazepam is a noxious substance or a substance likely to endanger human life or to cause grievous hurt to human beings.

3. Section 29(2)(k) reads as follows:

29. Power to frame rules:--

(1) The Government may make rules for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the Government may make rules:-

xx xx xx(k) prohibiting the use of any article which the Government shall deem to be noxious or otherwise objectionable in the manufacture of liquor or of any intoxicating drug;

Under Section 29(2)(k) the Government has the power to prohibit any article which shall be deemed to be noxious or otherwise objectionable in the manufacture of liquor or any intoxicating drug. In Roshy 's case (supra) the learned Judge in paragraph 5 observed as follows:

5...Even if the presence of chloral hydrate in the sample is admitted, it will come only as an offence under Section 55(a) of the Abkari Act. Clause (k) of Sub-section (2) of Section 29 of the Abkari Act provides that Government makes rules prohibiting the use of any article which shall be deemed to be noxious or otherwise

objectionable in the manufacture of liquor or of any intoxicating drug. It has come out in evidence that there is no notification prescribed by the Government notifying that the chloral hydrate is a noxious substance to endanger human life. From Ext.P-3 it is not clear whether necessary test is conducted to find out chloral hydrate in the sample. Hence Ext.P-3 report cannot be relied on.Learned Public Prosecutor contended that for being a noxious substance, notification is not compulsory and Section 29(2)(k) is only an enabling provision to notify any substance as noxious substance. If any noxious substances, whether notified under Section 29 or not, is added to toddy, Section 57A is applicable. To declare a substance as noxious, a notification under Section 29(2)(k) is not necessary. We agree with the above view, no notification is necessary under Section 29(2)(k) to term a substance as noxious . For example, if Methyl alcohol is added to toddy which will endanger life, it cannot be said that Section 57A is not applicable. Section 29(2)(k) is only an enabling provision. Even a non-noxious substance can be notified as deemed to be noxious and such a wide power is given to the Government by Section 29. The legislature is quite compelled to create a legal fiction and by a deeming provision it can bring something with the meaning of a word which is not covered by its ordinary meaning. In interpreting a provision creating a legal fiction, the court has to ascertain for what purpose the fiction is created as held by the Apex Court in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory, Quilon : [1954]1SCR53 . As held by the Apex Court in Union of India v. Jalyan Udyog : 1993ECR7(SC) legal fiction can be created by delegated legislation. Here, Section 29(2)(k) authorises framing of such delegated legislations.

4. If a noxious substance is added to the toddy, it will attract Section 57A. Then the question is what is the meaning of the term noxious? There is no statutory definition in the Act. However, in the PFA Act, a general definition is mentioned. Section 2(xv) of the PFA Act reads as follows:

2.(xv) the word 'unwholesome' and 'noxious' when used in relation to an article of food mean respectively that the article is harmful to health or repugnant to human use.

In the absence of a statutory definition in the Act, apart from other contemporary legislation as PFA Act, we may also refer to the dictionary meaning in this connection. In Oxford Dictionary the word 'noxious' is defined as follows:

noxious (nok-shus) adjective unpleasant and harmful.

In New Websters Dictionary the word 'noxious' is defined as follows:

nox-ious, nok'shus, a. [L.noxious < noxa. harm, injury < nocere, to harm, hurt] Harmful or injurious to health or physical well-being; as, noxious vapors; deleterious; unwholesome: morally harmful or pernicious; as, noxious teachings.-nox.ious'ly, adv.-nox'ious'ness, n.

In Words and Phrases Permanent Edition Volume 28A by St.Paul Minn. West Publishing Company, noxious substance is explained as follows:

NOXIOUS POTION OR SUBSTANCE

'Noxious' means 'hurtful, harmful, baneful, pernicious, destructive.' 'Potion' means 'draught used as a liquor, medicine, or dose.' Webster Diet. 'Poison' has been defined as 'any substance which, when applied to the body externally, or in any way introduced into the system without acting, mechanically, but by its own inherent qualities, is capable of destroying life'. Beck, Med.Jur.. and 'as a substance having an inherent deleterious property, which renders it, when taken into the system, capable of destroying life', Wharton & Stille. The term 'noxious potion or substance' is a broader term than 'poison.'. 'Poison' would not include powdered glass or boiling water, while 'noxious potion or substance' would not only embrace poisons, but the latter. As used in a statue inflicting a punishment on any one mingling 'any other noxious potion or substance with any drug, food, or medicine, with intent to kill or injure any person', the word 'potion' applies to some hurtful or baneful liquid; and the words 'noxious substance' means some solid of hurtful or baneful character. The phrase 'noxious potion, or substance' means some character of poison. Runnels v. State 77 S.W. 458,460 : 45 Tex.Cr.R. 446.

We also refer to the provisions contained in Sections 272 and 273 of the Indian Penal Code. It reads as follows:

272. Adulteration of food or drink intended for sale.-- Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

273. Sale of noxious food or drink.-- Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

In Joseph Kurian v. State of Kerala : 1995 CriLJ502 the Supreme Court held as follows:

In order to establish that that an offence under Section 272 IPC has been committed, the prosecution has to prove that article involved was food or drink meant to be consumed by live persons, that the accused adulterated it, that such adulteration rendered it, that noxious as food or drink, and that the accused at the time of such adulteration intended to sell such article as food or drink, or knew it to be likely that such article would be sold as food or drink. Now noxious rendering is making it poisonous or harmful or both. As is plain the offence is complete on introduction of the adulterant in the food or drink, provided it is meant for the purposes of sale, actual or likely....

A reading of the above would show that a substance to become noxious, it should be harmful to health. The sole question is whether Chloral Hydrate and Diazepam are noxious substances.

5. Section 3 of the Poisons Act deals with power to prohibit importation into India of any poison except under licence. The Poisons Act was further amended in the year 1958. In exercise of the powers conferred by Section 2 of the Poisons Act, 1919, the State of Kerala has framed 'The Kerala Poisons Rules, 1996'. Rule 2(i)

defines 'poison' which reads as follows:-

2(i) 'Poison' means any substance specified in Schedule I or Schedule II or any substances claimed to or found to contain any of the substance specified in Schedule I or Schedule II.

The first item in Schedule 1, which deals with 'List of Poisons' is 'Chloral Hydrate'. So, Chloral Hydrate is a declared poison under the provisions of Poisons Act, 1919. Chloral Hydrate was removed from Schedule-H of the Drugs and Cosmetics Rules. So, now one cannot get it even on a prescription as it is a banneti item. The notification issued by the Ministry of Health and Family Welfare No. GSR 578(E), dated July 23, 1983, published in the Gazette of India. Part II, Section 3(i), dated 23rd July, 1983 reads as follows:

Whereas the Central Government is satisfied that the use of the drugs specified in the Table below is likely to involve risk to human beings or the said drugs do not have the therapeutic value claimed or purported to be claimed for them or contain ingredients and in such quantity for which there is no therapeutic justification and it is necessary and expedient in the public interest so to do.

Now, therefore, in exercise of powers conferred by Section 26-A of the Drugs and Cosmetics Act, 1940 (23 of 1940), the Central Government hereby prohibits the manufacture and sale of the said drugs, namely:-

TABLE

1. XXX XXX XXXXXX XXX XXX43. Chloral Hydrate as a drug.

Chloral Hydrate even though used earlier for therapeutic uses in hysteria or insomnia for producing sedation, now, in view of the ban it cannot be used. Therefore, we disagree with the views in Roshy's case (supra) that Chloral Hydrate which is declared as poison and prohibited to use even as a drug is not a noxious substance merely because it is not notified under Section 29(2)(k). Of course, the Poisons Act, notification issued by the Ministry etc. were not pointed out before the learned Single Judge.

6. The next contention relates to addition of Diazepam. It was contended by the petitioner that in the absence of a notification under Section 29(2)(k) of the Act, in each case evidence has to be adduced whether the substance added is a noxious substance. If a substance was declared as noxious substance by notification, it would have been an end of the matter beyond doubt. First of all we may consider what is Diazepam. It is not disputed that it is a schedule drug. Under Schedule H of the Drugs and Cosmetics Rules permitted doses of Diazepam can be used with prescription. It is also not disputed that Diazepam is mentioned as a psychotropic substance under the Narcotic Drugs and Psychotropic Substances Act, 1985 and it is item No. 194 in the notification published under Sub-clause vii(a) and xxiii(a) of Section 2 of the NDPS Act specifying small quantity and commercial quantity. Diazepam is a benzodiazepine derivative. Chemica!'y, Diazepam is 7-chloro-l, 3-dihydro-l-methyl-5-phenyI-2H-l,4-benzodiazepin-2-one. It is a colourless crystalline compound. It affects chemicals in the brain that may become unbalanced and cause anxiety, seizures and muscle spasms and permitted doses are used to relieve anxiety, nervousness and tension associated with anxiety disorders and, therefore, it is used for medication under doctors' prescription. Diazepam increases the effects of all other drugs including alcohol. Indian Pharmacopoeia, 1995 Volume I describes Diazepam in the category of Anxiolytic; sedative; anticonvulsant and dose is mentioned as follows:

Dose: In anxiety states, 2 mg thrice daily, increased it necessary to 15 to 30 mg daily, in divided doses; in insomnia associated with anxiety, 5 to 15 mg at bedtime. By intramuscular or slow intravenous injection, 10 mg, repeated if necessary after 4 hours.

Diazepam is commercially known as Valium, in the complete drug reference by Martindale, Thirty-third edition, it is stated about Diazepam as follows:

Dependence and Withdrawal

The development of dependence is common after regular use of diazepam or other benzodiasepines, even in therapeutic doses for short periods. Dependence is particularly likely in patients with a history of alcohol or drug abuse and in patients with market personality disorders.

The general terms stated therein are as follows:

'Adverse Effects

Drowsiness, sedation, muscle weakness, and ataxia are the most frequent adverse effects of diazepam use. They generally decrease on continued administration and are a consequence of C'N S depression. Less frequent effects include vertigo, headache, confusion, depression (but see Effects on Mental Function, below), slurred speech or dysarthria, changes in libido, tremor, visual disturbances, urinary retention or incontinence, gastrointestinal disturbances, changes in salivation, and amnesia. Some patients may experience a paradoxical excitation which may lead to hostility, aggression, and disinhibition. Jaundice, blood disorders, and hypersensitivity reactions have been reported rarely. Respiratory depression and hypotension occasionally occur with high dosage and parenteral administration.

Pain and thrombophlebitis may occur with some in travenous formulations of diazepam; raised liver enzyme values have occurred.

Overdosage can produce CNS depression and coma or paradoxical excitation. However, fatalities are rare when taken alone.

Overdosage can result even in death. With regard to overdosage and fatality it is stated as follows:

Overdosage.-Impairment of consciousness is fairly rapid in poisoning by benzodiazepines. Deep coma or other manifestations of severe depression of brainstem vital functions are rare; more common is a sleep like state from which the patient can be temporarily roused by appropriate stimuli. There is usually little or no respiratory depression, and cardiac rate and rhythm remain normal in the absence of anoxia or severe hypotension. Since tolerance to benzodiazepines develops rapidly, consciousness is often regained while concentrations of drug in the blood are higher than those which induced coma. Anxiety and insomnia can occur during recovery from acute overdosage, while a full-blown withdrawal syndrome, possibly with major convulsions, can occur in patients who have

previously been chronic users. During the years 1980 to 1989. 1576 fatal poisonings in Britain were attributed to benzodiazepines alone and another 591 to overdosage combined with alcohol.

It shows that in 1980-89, 591 deaths were reported due to usage of Diazepam with alcohol. It is further stated that Diazepam may cause withdrawal syndrome, even in therapeutic doses for short periods. It is also stated that enhanced sedation or respiratory and cardiovascular depression may occur if diazepsm or other benzodiazepines are used along with alcohol or certain other drugs.

7. The Pharmacologic Principles of Medical Practice by John C. Krantz, Jr. Sixth Edition. states that the use of alcohol with Diazepam should be avoided. In Chapter 6 of the publication made by the US Drug Enforcement Administration it is stated as follows:. Abuse is frequently associated with adolescents and young adults who take benzodiazepines to obtain a 'high'. This intoxicated state results in reduced inhibition and impaired judgment. Concurrent use of alcohol or other depressant with benzodiazepines can be life threatening. Abuse of benzodiazepines is particularly high among heroin and cocaine abusers. A large percentage of people entering treatment for narcotic or cocaine addiction also report abusing benzodiazepines. Alprazolam and diazepam are the two most frequently encountered benzodiazepines on the illicit market.

Considering the various authorised publications, text books and opinion of experts, it can be stated that Diazepam is a noxious substance. It is injurious to health. Merely because Diazepam is used on the prescription of doctors at permitted doses as mentioned in the Drugs and Cosmetics Act, it is not a medicine to be recommended to use along with toddy. The customers are not going in the toddy shop with the prescription of a doctor. Therefore, we are unable to agree with the observation in the Roshy's case (supra) that merely because a substance can be administered only on prescription of a doctor for a particular illness, it is not injurious to health. However, whether the petitioner in this case has added Diazepam and committed the offence is a different question which has to be decided by the court according to law and on the basis of evidence.

8. Another observation made by the learned Single Judge in Roshy's case (supra) is that taking of samples can be done only by following the procedure prescribed under Section 36 of the Abkari Act. It is true that procedure prescribed under Section 36 is necessary when searches are made under Section 30 or 31. However, taking regular samples or inspecting the place under Section 32, Section 36 is not applicable. Section 32 of the Act reads as follows:

32. Power to enter and inspect place of manufacture and sale:- The (Commissioner of Excise) or any Abkari Officer not below the rank of (Preventive Officer) or any Police Officer duly empowered in that behalf, may enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of any liquor or intoxicating drug, or draws toddy, or stores any liquor or intoxicating drug or toddy, and may enter and inspect, at any time during which the same may be open, and place in which any liquor or intoxicating drug is kept for sale by any licensed person; and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, liquor or intoxicating drugs found in such place.

Section 36 is applicable when search has to be made. The matter is covered by the decision of a Division Bench of this Court in which one of us was also a party (Koshy, J.) in Prabhakaran v. Excise Inspector 2002 (1) KLT 896. Paragraphs 11 and 12 of the above judgment read as follows:

11. Unlike Section 31, where Abkari Officers had right of entry and search, at any place, under Section 32, the Abkari Officers can enter and inspect only the premises where liquor and intoxicating drug is kept for sale by any licensed person and only places where any licensed manufacturer carries on any manufacture of liquor or intoxicating drug etc. at any time whether day or night during which the same may be open and may test, measure or weigh any materials, utensils etc. This speaks about the routine inspection in the licensed premises or places of licensed persons. Here, only the licensed premises was searched under Section 32. Under Section 32 of the Act, power of entry and inspection is not limited to specified offences during the relevant time when inspection was conducted. The power under Section 32 is kept in tact and entry and inspection of the licensed

premises under Section 32, when the premises is open, can be done and aftertest and examination, if any offences were suspected to have conducted he can file a report under Section 50. Earlier High Court judgments as well as the Supreme Court judgment only deal with the power of search and inspection under Section 31 of the Act. Here, specific contention is that they have conducted inspection of only licensed premises under Section 32 of the Act. For conducting inspection and search, there is no condition precedent that before such inspection, the officer has reason to believe that a specified offence has been committed. Regular inspection in the licensed premised and seizure of liquor can be done under Rule 6 of Kerala Abkari Shops (Disposal in Auction) Rules (hereinafter referred to as 'the Rules). Sub-rule (7) of Rule 6 of the Rules reads as follows:-

'Every officer authorised to inspect shops shall have authority to take possession of any toddy, foreign liquor found unfit for consumption or suspected to have been tampered with. The officers not below the ranks of Excise Inspectors are empowered to seize and destroy any liquor kept in shops and found to be unfit for consumption or which has been tampered with.

12. Under Section 27 of the Act, person in possession of the liquor as per licence is bound to test the liquor as required by the Abkari Officer. Therefore, if sample is taken during inspection as authorised under Section 32 and if the Abkari Officer finds out any offences, it is for the authorised Abkari Officer to file report under Section 50 of the Act to the competent Magistrate and, thereafter, it is for the Magistrate to deal with the same as prescribed in the Code of Criminal Procedure. Since inspection was conducted here as authorised under Section 32 and sample was taken and report was filed on the basis of the result of the test, it is for the Magistrate to deal with the matter and, if necessary, commit the matter as contemplated under the provisions of the Act and we see no ground to interfere in the matter at the initial stage. Hence we are of the opinion that for conducting an inspection of the premises of a licensed person under Section 32, it is not obligatory that the authorised officer has to form an opinion that a specified offence in Section 31 is committed, in such routine inspection, if an offence is detected, he is perfectly authorised to file areport under Section 50.

Therefore, if sample is taken in the routine inspection of licensed premises under Section 32, matter can be reported under Section 50. We are not expressing any opinion regarding how the results of the samples should be produced and proved before the court etc. as in this case trial is yet to commence.

We hold that:

(1) Section 29(2)(k) is only an enabling provision. If a noxious substance or any substance which is likely to endager human life or causing grievous hurt to human beings is added with any liquor, Section 57A is applicable. To be a noxious substance, it is not necessary that the name of that substance should be notified under Section 29(2)(k) even though Government has power to declare any substance as noxious under the above provision.

(2) Chloral Hydrate and Diazepam are noxious substances.

(3) When sample is taken under Section 32 without a search under Sections 30 or 31, procedure under Section 36 is not mandatory and report can be filed under Section 50.

Observations to the contrary in Roshy's case (supra) are not correct and hence overruled.

The reference is answered accordingly. The bail application is dismissed as infructous.

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