

**Balu Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Dec-01-2006

**Reported in :** 2007(1)KLT401

**Judge :** R. Basant, J.

**Acts :** Kerala Abkari Act, 1077 - Sections 29, 56 and 57; Code of Criminal Procedure (CrPC) - Sections 482; Indian Penal Code (IPC) - Sections 272

**Appeal No. :** Crl. M.C. No. 920 of 2006

**Appellant :** Balu

**Respondent :** State of Kerala

**Advocate for Def. :** Puzhakkara Mohammed, Public Prosecutor

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

**Disposition :** Petition allowed

**Judgement :**

**R. Basant, J.**

1. The petitioner face indictment in a prosecution under Section 57(a) and 56(b) of the Kerala Abkari Act. They are Salesman and Licensee respectively of a duly licensed toddy shop. The crux or the gravamen of the allegation is that samples of

toddy drawn from the Petitioner's business premises on 30-10-2005 at 7.30 p.m. were sent for chemical examination, two of the said samples answered the test for starch positively. It is on this only and primary fact that the allegation is raised that the petitioners is liable to be punished under Section 57(a) and 56(b) of the Kerala Abkari Act. No other allegations whatsoever are raised. The chemical examiner's report clearly shows that there was no noxious ingredients injurious to health available in the toddy. The investigation is pending and final report has not been filed so far submits the learned Public Prosecutor.

2. The learned Counsel for the petitioners contends that even if the allegations were accepted in toto, the allegations do not constitute the offence punishable under Section 57(a) of the Kerala Abkari Act and consequently there can be no allegation of any infraction of the provisions of Section 56(b) of the Abkari Act also.

3. The crucial section which is relevant to 57(a) of the Kerala Abkari Act. It reads as follows:

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, 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 (S.272 of the Indian Penal Code).

4. The vital allegations to be proved is that the liquor was mixed

(a) With any drug other than a noxious drug or

(b) any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength or

(c) 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 (S.272 of the Indian Penal Code)

5. The short and the only allegation is that the toddy sample was found to answer the test for starch positively. That starch was added to the toddy in the toddy shop is the crux of the allegation. The learned Counsel for the petitioner contends that even assuming that starch has been added to the liquor it cannot be reckoned as 'any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength' Clauses a & c referred above cannot apply at all and there is no contention by the learned Public Prosecutor/State that 57(a) would be attractive because any other circumstances (i.e., clauses a & c narrated above)<sup>7</sup>

6. The only allegation is that the toddy did contain foreign ingredient of starch. There is no whisper of an allegation that starch is an ingredient likely to add to the actual or apparent intoxicating quality or strength of toddy. In the total absence of such allegation, the ingredients of Clause (b) shown above cannot also be held to be present.

7. The counsel for the petitioner has justified in bringing to the notice of the Court Annexure - C order passed by the Government wherein the penultimate paragraph it is clearly held 'as such adding starch to toddy cannot attract action under Section 57(a)'.

8. I am in these circumstances unable to find any worthwhile allegation attracting a sustainable charge under Sections 57(a) and 56(b) of the Kerala Abkari Act. No other contentions are raised by the learned Public Prosecutor on behalf of the State to support the challenge I am in these circumstances satisfied that this is a fit case where the powers under Section 482 of the Cr. PC. can and ought to be invoked in the absence of any sustainable allegation attracting culpability.

9. In the result

(a) This Crl.M.C is allowed.

(b) The proceedings against the petitioner in Crime No. 97/2005 of Excise Range Office, Kollam shall stand quashed.

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