

Surendran Vs. Excise Inspector

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Court : Kerala

Decided On : Aug-06-2003

Reported in : 2004(1)KLT404

Judge : Jawahar Lal Gupta, C.J. and; A.K. Basheer, J.

Acts : Abkari Act, 1088 - Sections 55 and 58

Appeal No. : Crl. R.P. 713 of 1994

Appellant : Surendran

Respondent : Excise Inspector

Advocate for Pet/Ap. : P.V. Kunhikrishnan, Adv.

Judgement :

Jawahar Lal Gupta, C. J.

1. On account of the conflict of decisions regarding the scope and interpretation of Sections 55 and 58 of the Abkari Act, this revision has been referred to Division Bench. First, the facts.

2. The petitioner is running a stationery shop. On April 26, 1989 he was found to be in possession of 15 litres of 'Arrack' kept in a plastic container and 27 bottles of 'Arrack' each containing 180 ml. He was prosecuted for the offence punishable under Section 55(a) of the Abkari Act.

3. The trial court convicted and sentenced the petitioner to undergo simple imprisonment for one year and to pay a fine of Rs. 1000/-. In default, he was to undergo simple imprisonment for a further period of one month. He filed an appeal. The Appellate Court reduced the sentence of imprisonment to six months. However, the conviction under Section 55(a) was upheld, hence, this Revision Petition.

4. Mr. Kunhikrishnan, learned counsel for the petitioner has made a two-fold submission. Firstly, it has been contended that the evidence on record does not prove the charge. In any event, the counsel submits that even if the prosecution story is believed, the petitioner could be punished only under Section 58. The ingredients of Section 55(a) are not satisfied.

5. No one has appeared on behalf of the State to support the conviction.

6. In view of the divergence of judicial opinion as expressed by different Single Benches, we consider it appropriate to notice the provisions of Sections 55(a) and 58 as these existed at the relevant time. These read as under:

'55. For illegal import, etc.- Whoever in contravention of this Act or of any rule or order made under this Act or of any licence or permit obtained under this Act.

(a) imports, exports, transports, transits or possesses liquor or any intoxicating drug; or

xxx xxx xxxshall, on conviction before a Magistrate be punished, -

(1) for any such offence, other than an offence falling under Clause (d) or (e), with imprisonment for a term which may extend to two years and with fine which may extend to five thousand rupees:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court. -

(i) such imprisonment shall not be less than six months and fine shall not be less than one thousand rupees for a first offence; and

(ii) such imprisonment shall be rigorous and shall not be less than one year and fine shall not be less than two thousand rupees for a subsequent offence;

(2) for an offence falling under Clause (d) or Clause (e), with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.....'

'58. For possession of illicit liquor.- Whoever, without lawful authority, has in his possession any quantity of liquor or of any intoxicating drug, knowing the same to have been unlawfully imported, transported or manufactured, or knowing the duty, tax or rental payable under this Act not to have been paid therefor, shall on conviction before a Magistrate, be punished with fine which may extend to three thousand rupees, or with imprisonment for a term which may extend to six months, or with both.'

7. A perusal of Section 55 shows that any person found guilty under this provision can be awarded sentence of imprisonment for a term which may extend 2 years and with fine upto Rs. 5000/-. Under Section 58, the person found guilty can be 'punished with fine which may extend to three thousand rupees, or with imprisonment for a term which may extend to six months, or with both.' Thus, it is clear that according to the Legislature the offence under Section 55(a) is more serious than the one under Section 58.

8. The conflict of judicial opinion exists in the context of the meaning of 'possession'. In the cases of *Rajeevan v. Excise Inspector* (1991 (1) KLT 38) and *Purushan v. State of Kerala* (2002 (2) KLT 661), the view taken appears to be that to be culpable the possession must be in the course of import, export, transport or transit. Simple possession is not enough to attract the rigour of Section 55(a). As against this, the view expressed in *Meenakshi v. Excise Circle Inspector* (1995 (1) KLT 738) (particularly in paragraph 11) is that Section 58 would be attracted only when the possession is coupled with the knowledge that the liquor had been 'unlawfully imported, transported or manufactured, or knowing that the duty, tax or rental payable under the Act has not been paid therefor.....' Otherwise, the case would fall within the mischief of Section 55A.

9. If the view as taken in Meenakshi's case is accepted the result would be that when a person is in possession of liquor with the knowledge that it has been unlawfully imported, transported, manufactured or that duty etc. has not been paid, the sentence would be less while in a case where there is mere possession without any knowledge of any other illegality the sentence would be higher. We cannot attribute such an intention to the Legislature. Innocent possession cannot be a more serious offence than possession with the knowledge of illegal import etc. Thus, it appears that the case shall fall within the ambit of Section 55(a) only when a person is found to be in possession of liquor in the course of import, export, transport or transit of the goods. In case the possession is merely with the knowledge of the goods having been illegally imported or manufactured, the case would fall within the mischief of Section 58.

10. The matter can be looked at from another angle also. Keeping in view the slight similarity in language it is permissible to refer to the heading of the provision. Section 55 is labelled as - 'for illegal imports etc.' Thus, the Legislature is providing for penalty in a case where a person illegally imports alcohol. Section 58 makes the 'possession of illicit liquor' culpable. Resultantly, it is clear that when a person is in possession of liquor while illegally importing it the case would be covered under Section 55(a). In a case where the possession is of illicit liquor the case would fall within Section 58. In other words, we hold that the view as expressed in *Rajeevan v. Excise Inspector and Purushan v. State of Kerala* is correct.

11. What is the position in the present case? Even according to the prosecution, the petitioner was in possession of 15 litres of 'arrack' which had been kept in a plastic container and 27 bottles of 'arrack' each containing 180 ml. These goods were lying in the shop. He was not importing the liquor or exporting it. It was not in transit. Therefore, it does not fall within the ambit of Section 55(a).

12. The next question that arises for consideration is - Does the case fall within the ambit of Section 58? It is undoubtedly true that the possession has been proved. However, there is no finding recorded by either the trial court or the lower appellate court that the petitioner was having knowledge that it was illicit liquor. Learned counsel for the petitioner has specifically stated before us that there was

not even a suggestion that the petitioner was aware of the fact that it had been illegally imported or manufactured or that duty etc. had not been paid. Thus, it appears that even the ingredients of Section 58 are not satisfied.

13. In any case, it is the admitted position that the petitioner's premises were raided on April 26, 1989. He has been living under the threat of this case for the last 14 years. Even if it is assumed that he was in possession of illicit liquor, we feel that a punishment of fine of Rs. 3000/- would meet the ends of justice. Thus, the revision is partly allowed. The sentence of imprisonment is set aside. The petitioner is held liable to pay a fine of Rs. 3000/-. In case of default, he will be liable to undergo simple imprisonment for a period of 15 days.

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