

K. Vedantham Vs. State and Another

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Court : Chennai

Decided On : Oct-01-1993

Reported in : 1994CriLJ1882

Judge : S.M. Ali Mohamed, J.

Appeal No. : Cri.O.P. No. 9449 of 1991

Appellant : K. Vedantham

Respondent : State and Another

Advocate for Def. : S. Somasundaram, Govt. Adv.

Advocate for Pet/Ap. : N.P.K. Menon, Adv.

Judgement :

ORDER

1. This petition under Section 482 Cr.P.C. is to call for the records connected with C.C. No. 1104 of 1991 on the file of the Judicial Magistrate, No. 2, Madurai and to quash the same.

2. The petitioner herein, during the material time when the alleged offence was committed, was working as the Assistant Public Prosecutor Grade-I (Administration - Selection Grade), Madurai Rural District, Madurai.

3. The petitioner has stated in his petition as follows; -

'On 9-4-1991, in the evening, after returning from the office at about 6.00 p.m. in a auto-rickshaw, probably due to the jerks, I developed severe pain. Therefore, I went to a medical shop to get some medicine for pain relief. The chemist in the medical shop wanted me to name a particular pain-killer and I could not do so, because, I did not have a prescription. So, I returned to my house after purchasing Mc. Dowell Whisky from a licenced wine shop close by, and was relaxing. My wife is a heart-patient, and she had three heart attacks between July 1990 and September 1990. While I was relaxing, my wife complained to me that she was having chest pain and, therefore, to get medical assistance for her, I went out of my house to get a transport. The office of the Superintendent of Police, Madurai Rural is just about 150 feet from my house. When I crossed the Superintendent of Police, Madurai Rural Camp Office, I thought I could either telephone to the second respondent or the Superintendent of Police to give me a transport to take my wife for medical assistance and, therefore, I asked the sentry there to tell the Superintendent of Police, Madurai Rural, if available, or to telephone the second respondent about my request. I was asked to wait by the Sentry and he went inside the Bungalow.

Shortly thereafter, to my shock, some police officers came and surrounded me and I was forcibly taken in a police van to the Government Rajaji Hospital, Madurai at about 8.30 p.m. On entering the Casualty Department, I found the Assistant Commissioner of Police, by name Thiru Murugeswaran, talking to the Casualty Medical Officer. Samples of my blood and urine were taken in spite of my protest. I pointed out to them that consumption of liquor is not an offence after the amendment of the Prohibition Act 12 of 1990 and that even a permit is dispensed with. I could not prevent the samples being taken as I wanted to be relieved immediately to reach my wife who was in need of medical assistance.

The Medical Officer gave immediately a certificate of consumption of liquor, and I was taken to the H-1 Thallankulam Police Station, Madurai, at 9.30 p.m. and a case was registered in their Crime No. 547 of 1991 under Section 4(1)(j) of the Tamil Nadu Prohibition Act and I was also arrested and released on bail immediately. The First Information Report was by Mr. K. Muthalagan, P.C. 1197, of the Armed Reserve Police (who was doing Sentry duty at the S.P.'s Camp

Office.) I have been working at A.P.P. Madurai from 1984 to 1988 and thereafter from May 1989 till the date of occurrence. I have been performing my duties very efficiently and strictly according to law and there were occasions when the police officers who had to deal with me, failed to get what they wanted from me and, therefore, some of the police officers found me an inconvenient person to their choice and so they were trying to get me transferred out of Madurai by any means. I strongly suspect that what transpired on 9-4-1991 is as a result of their intention to get rid of me from Madurai. I am convinced that this could only be the reason, because, immediately after the registering of the case, the second respondent wrote a letter to the Director General of Police to transfer me out of Madurai and I was transferred from Madurai to Chengalputtu. Challenging that Order of transfer to Chengalputtu, I filed O.A. No. 2120 of 1991 before the Tamil Nadu State Administrative Tribunal and their Lordships admitted my application and stayed the operation of the order of transfer on 12-8-1991. I continued as APP, Grade-1, Madurai Rural (Administration).

4. On the basis of a First Information Report given by one Muthalagan, Police Constable, the matter was investigated and finally the petitioner was charge-sheeted under Section 4(1)(j) of the Tamil Nadu Prohibition Act. It is contended by the learned counsel for the petitioner, Mr. N. P. K. Menon that the charge framed under Section 4(1)(j) against the petitioner, is unsustainable in law for the reasons that during the material time when the offence was committed, there was amendment to Section 4(1)(j) by amendment Act 12 of 1990 by which Section 4(1)(j) was amended as follows :-

'In Section 4 of the principal Act, in sub-section (1), -

(1) for clause (j), the following clause shall be substituted, namely; -

'(j) consumes or buys, -

(i) any liquor other than such liquor as may be specified by the State Government, by notification, in this behalf; or

(ii) any intoxicating drug; or';

5. In pursuance of the amendment, the Government of Tamil Nadu, issued a notification dated 10-3-1990, which is as follows :-

NOTIFICATION BY GOVERNMENT

...

Home, Prohibition and Excise Department

..

Specification of certain liquors for purpose of certain clause of Tamil Nadu Prohibition Act. (G.C. Ms. No. 330, Home, Prohibition and Excise (V), 9th March, 1990).

No. 11, (2)/Hope/1333(h)/90.

Under sub-clause (i) of clause (j) of sub-section (1) of Section 4 and sub-section (2-A) of Section 54 of the Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act 10 of 1937), the Governor of Tamil Nadu hereby specifies for the purpose of the said clause (j), the following liquors, namely; -

(1) Indian-made Foreign Spirits.

(2) Foreign liquor.

(3) Beer.

(4) Wine.

(5) Country liquor.

2. This notification shall be deemed to have come into force on the 7th March, 1990'.

6. Learned counsel for the petitioner Mr. N. P. K. Menon, pointed out that the alleged offence took place on 9-4-1991. On the material date, when the offence is alleged to have taken place already, the amendment to Section 4(1)(j) as per Act

12 of 1990 had come into force with effect from 7-3-1990. He pointed out that in item No. 5 of the Notification, 'Country Liquor' is also added. Even if the petitioner/accused had consumed country liquor, he would not have committed an offence.

7. There is substance in the contention of the learned counsel for the petitioner that during the material time when the alleged offence was committed under Section 4(1)(j), it was not an offence even if a person consumes country liquor. In the instant case the petitioner has admitted that he purchased Mc. Dowell whisky and even admitting that during the material time when offence was committed, he had consumed the same, it is not an offence after amendment to Section 4(1)(j) of the Tamil Nadu Prohibition Act, 1937 by the Tamil Nadu Prohibition (Amendment), Act, 1990 (T.N. Act No. 12 of 1990), read with notification under Section 4(1)(j)(i) by G.O. No. 330, Home. Prohibition and Excise (V), dated 9th March, 1990, published in Tamil Nadu Government Gazette on March 10, 1990. In the instant case, the offence is alleged to have taken place on 9-4-1991 when the Amendment Act 12 of 1990 had already come into force with effect from 7-3-1990 and the notification was issued on 9-3-1990. Therefore on the date when the offence was alleged to have been committed by the petitioner, i.e. on 9-4-1991, it ceased to be an offence and therefore criminal prosecution instituted against the petitioner, is not sustainable in law.

8. In view of the above, there is infirmity in the criminal proceedings against the petitioner and accordingly, the petition is allowed. The criminal proceedings in C.C. No. 1104 of 1991 on the file of the Judicial Magistrate, No. 2, Madurai, against the petitioner is, therefore, quashed.

9. Petition allowed.