

State Vs. A. Modeen Kunju and Others

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Court : Chennai

Decided On : Dec-02-1991

Reported in : 1992CriLJ3970

Judge : Janarthanam, J.

Appeal No. : Cri. R.C. No. 594 of 1991 and Cri. R.P. No. 592 of 1991

Appellant : State

Respondent : A. Modeen Kunju and Others

Advocate for Def. : T. Munirathina Naidu and ;D. Selvaraju, Advs.

Advocate for Pet/Ap. : B. Sriramulu, Public Prosecutor

Judgement :

ORDER

1. The Assistant Superintendent of Police, Melur Range, along with the Deputy Director of Fisheries, Ramanathapuram and other officials, was said to have made a surprise inspection of vehicles on 4-1-1991 at 4 p.m. at the place called Ganapathiyapuram, which is near Melur and during the course of such inspection, they found that four persons, namely Kodaleeswaran, Krishnan, Sundarraaj and Ragonathan were engaged in the process of loading the lorry bearing registration number TMD 6039 and a van bearing registration number TN-59-6797 with gunny bags. On verification of the gunny bags so loaded, it was found the gunny bags

contained Jathi Chanks and Patti Chanks. There were 381 bags containing 16,550/- pieces of Jathi Chanks and 400 pieces of Patti Chanks. All of them were seized.

2. Thereafter, the Assistant Director of Fisheries, Ramanathapuram, filed a complaint, besides producing the seized contrabands, before the Judicial Magistrate, Melur against the aforesaid four persons, impleading them as accused 1 to 4 for violations of the provisions contained in Sections 6D and 6E, punishable under S. 6J of the Indian Fisheries Act (as amended by Tamil Nadu Act XXII of 1980 - for short 'the Act'), which was taken on file as C.C. No. 6 of 1991.

3. All the accused 1 to 4 pleaded guilty to the accusations levelled against them and consequently, learned Magistrate found them guilty under sections 6E read with 6D and S. 6J of the Act, convicted them thereunder and sentenced them each to pay a fine of Rs. 400/- in default to undergo simple imprisonment for three months. The fine amount is stated to have been paid by them.

4. Learned Magistrate also passed an order directing the return of the seized Chanks to the Assistant Director of Fisheries, Ramanathapuram.

5. The accused did not agitate the matter further challenging either the conviction and sentence or the order for return of the seized properties.

6. One A. Moideen Kunju, claiming to be the owner of the seized Chanks, filed Criminal Appeal No. 34 of 1991 on the file of the Additional Sessions Judge, Madurai, impleading the Assistant Director of Fisheries, Ramanathapuram and accused 1 to 4 respectively as respondents 1 to 5.

7. During the course of appeal, the said Moideen Kunju appeared to have contended that he purchased the seized chanks from one George at Kerala and the said Chanks, while in the process of transport to one Easwaran Chanku Company at Calcutta, were seized and subsequently ordered to be returned to the Assistant Director of Fisheries, Ramanathapuram before ever he could claim the ownership of the same.

8. In proof of such a contention, it appears that he filed certain documents before the Court of Session and learned Sessions Judge, without any enquiry, accepted the contentions of the said Moideen Kanju and ordered returned of the seized Chanks to him, giving rise to the present action.

9. The records in the case, though sent for by the Registry, did not at all reach this Court till date. However, learned counsel appearing on either side, agreed for the disposal of this revision, without the records and learned Public Prosecutor, in fact, produced the original records available at the hands of the Department for perusal.

10. Learned Public Prosecutor would mount a frontal attack on the order passed by learned Sessions Judge, by stating that the order made by him is totally without jurisdiction, besides being perverse, in the facts and circumstances of the case and therefore it is that it is but proper for the said order to be set aside.

11. Respondents 2 to 5/accused 1 to 4 were actually served with notice and they, in fact, entered appearance through counsel of their choice. However, no arguments had been advanced by learned counsel appearing for them.

12. Learned counsel appearing for the first respondent would however repel the submissions of learned Public Prosecutor and would state that in the facts and circumstances of the case, interests of justice require that the first respondent should be given an opportunity for proving his claim to the seized Chanks, by passing an order remitting the matter back to the trial Court for making an enquiry to decide the question as to who is entitled to the possession of the seized Chanks.

13. As per S. 6D of the Act, it is the exclusive privilege of the State Government in possessing, selling, moving, storing, transporting or fishing Chanks, or carrying on any business, industry, any other activity in respect of State of Tamil Nadu. If any person is engaged in any of activities, as referred to above, without a valid permit, it is per se violation of the provisions adumbrated under sections 6D and 6E, punishable under S. 6J of the Act.

14. While reciting the facts of the case, it was made crystal clear that the respondents 2 to 5/ accused 1 to 4 were engaged in the process of loading the lorry as well as the van, as stated above, with gunny bags, containing Jathi Chunks and Patti Chunks. They were unable to explain their possession, in the sense of having in any other activity as referred to above. But the sordid fact is that they pleaded guilty to the offences, without any reservation and walked away from the Court, by paying the fine amounts imposed on them. As already stated, they did not agitate the matter further by way of filing of an appeal before Court of Session. Nor did they make any claim before Court of Session when they were impleaded as respondents 2 to 5 along with the Assistant Director of Fisheries, as respondent 1. Before this Court also, they did not make any claim to the seized Chunks. The claim is made only by the first respondent. The adjudication of the claim made by the first respondent by learned Sessions Judge accepting his contention, as Gospel truth, without any enquiry cannot at all be countenanced as being sustainable in law. Plethora of tangible materials are available on record pointing out that the respondents 2 to 5/ accused 1 to 4 alone were in possession of the seized conches and they were alone attempting to transport them to a destination known to them through the vehicles. Even in the statements said to have been recorded from them by the Assistant Director of Fisheries, they did not even whisper anything as to the conches actually belonging to the first respondent. In such circumstances, the order of learned Sessions Judge ordering for the return of the conches to the first respondent cannot be said to be sustainable in law and the same deserves to be set aside.

15. Having regard to the facts of this case, I also feel that there is no impleading necessity for the matter to be remitted back to the trial Court for holding an enquiry to find out as to who is entitled to the possession of the seized conches. If the first respondent feels that he is jeopardised by the setting aside the order passed by learned Sessions Judge, it is very well open to him to establish his claim of ownership to the seized conches by filing a civil suit before the competent Court.

16. In the result, the revision petition is allowed and the order of learned Sessions Judge in returning the seized conches to the first respondent is set aside, by restoring the order of the trial Court, in the sense of the seized conches to be

returned to the Assistant Director of Fisheries, Ramanathapuram.

17. Revision allowed.

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