

Rajesh Vs. Circle Inspector

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Court : Kerala

Decided On : Nov-27-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : Rajesh

Respondent : Circle Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL THURSDAY, THE27H DAY OF NOVEMBER20146TH AGRAHAYANA, 1936 Crl.Rev.Pet.No. 868 of 2002 (C) ----- AGAINST THE

JUDGMENT

IN S.C. NO. 371/1999 of ADDITIONAL ASSISTANT SESSIONS JUDGE, ALAPPUZHA. AGAINST THE

JUDGMENT

IN CRL.A.NO. 301/2001 of ADDITIONAL SESSIONS JUDGE, ALAPPUZHA DATED0405-2002. REVISION PETITIONER(S)/APPELLANT/ACCUSED: ----- RAJESH, AGED26YEARS, S/O. RAJAPPAN, PARAKKUDICHIRA VEEDU, WARD NO.I, RAMANKARY, ALAPPUZHA DISTRICT. BY ADV. SRI.GEORGE KURUVILLA(ALAPPUZHA) RESPONDENT(S)/RESPONDENT/COMPLAINANT: -----

CIRCLE INSPECTOR OF PULINCUNNU, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. ABHIJETT LESSLI THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27-11-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. HARILAL, J.

----- Crl.R.P. No.868 of 2002

----- Dated this the 27th day of November, 2014

ORDER

The revision petitioner is the accused in Sessions Case No.371/99 on the files of the Additional Assistant Sessions Judge, Alappuzha, as well as the appellant in Criminal Appeal No.301/2001 on the files of the Additional Sessions Court, Alappuzha. The petitioner was prosecuted for the offence under Sec.55(a) of the Kerala Abkari Act. The case of the prosecution that on 17-05-1998 at about 5.50 p.m. the petitioner was found in possession of 370 ml. of arrack under his cloth for the purpose of sale on the southern side of toddy shop No.54 in Ward No.1 in Ramankary Panchayat. Thus, the accused has committed the offence Crl.R.P. No.868 of 2002 -:

2. :- punishable under Sec.55(a) of the Abkari Act. On the side of the prosecution, Pws-1 to 4 were examined and marked Exts.P1 to P5 and M.O.1. For the petitioner, Dws.1 and 2 were examined and marked Exts.D1 and D2. After considering the evidence on record, the learned Assistant Sessions Judge, Alappuzha found the accused guilty of the said offence, entered conviction and sentenced thereunder. He was sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for six months. Set off under Sec.428 of Cr.P.C was also allowed.

2. Feeling aggrieved, the accused preferred the above Criminal Appeal No.301/2001 before the Additional Sessions Court, Alappuzha, challenging the conviction and sentence imposed on him. After re- appreciating the evidence on record, the learned Additional Sessions Judge also concurred with the findings of

the court below and confirmed the CrI.R.P. No.868 of 2002 -:

3. :- conviction and sentence as such without any interference. This revision petition is filed challenging the concurrent findings of conviction and sentence on various grounds.

3. It is the case of the revision petitioner that the courts below concurrently went wrong by convicting him relying on the sole evidence of official witnesses. The court below went wrong in appreciating the evidence of Pw1 and Pw3 who are said to have detected the offence. So also, the courts below failed to appreciate the evidence of Dw1 and Dw2 in its correct perspective. The learned Sessions Judge ought to have found that not even a single independent witness has supported the prosecution case. The only independent witness who is examined as Pw2 turned hostile to the prosecution and other independent witnesses were given up by the prosecution. It is also contended that the sample of the contraband seized was not proper and the prosecution has failed to prove CrI.R.P. No.868 of 2002 -:

4. :- that the sample which was sent for chemical analysis is the one which was taken from MO1 bottle. Similarly, the sentence imposed on the revision petitioner is excessive, harsh and disproportionate with the nature and gravity of the offence.

4. Per contra, the learned Public Prosecutor advanced arguments to justify the findings whereby the court below found the accused guilty of the offence charge sheeted against him. According to the learned Public Prosecutor, the evidence of Pw1 and Pw3, the official witnesses, is corroborative and nothing wrong in placing reliance on their testimonies which are trustworthy as well as believable. There is no material irregularity in the procedure whereby sampling was taken place and the chemical analysis report shows that the material which was sent for chemical analysis is the one which is taken from MO.1 bottle alone.

5. First of all, in view of the rival submissions, the question to be considered is whether there is any CrI.R.P. No.868 of 2002 -:

5. :- illegality or impropriety in any of the findings whereby the courts below found the accused guilty of the offence or whether there is any perversity in appreciating of evidence from which those findings have arrived at.

6. First of all, this court must remember the scope and extent of jurisdiction under Sec.397 read with Sec.401 of the Code of Criminal Procedure. Needless to say, the extent of jurisdiction is confined to illegality or irregularity and perversity in the findings only. This court has no jurisdiction or power to re- appreciate the entire evidence afresh and arriving at a finding other than that was concurrently found by the courts below. The main point raised in this revision petition is that the court below went wrong by relying on the sole testimony of official witnesses which is not corroborative. Going by the judgment passed by the lower appellate court, it could be seen that the learned Sessions Judge re-appreciated the evidence of Pw1 and Crl.R.P. No.868 of 2002 :-

6. :- Pw3 and placed reliance on their evidence on a finding that their testimonies as regards the detection of offence is corroborative and giving assurance each other. The revision petitioner could not point out any material irregularity or perversity in the appreciation of their evidence. Pw3 is the Sub Inspector who detected the offence and Pw1 is the Head Constable who accompanied Pw3 during the course of detection. It is to be noted that during the cross-examination of Pws1 and 3, the accused could not bring out any kind of malice or enmity towards him or they have no case that the official witnesses have an axe to grind him.

7. But, when relying on the solitary evidence of the official witnesses, their evidence must be in corroboration with the documents prepared contemporaneously along with the arrest and detention of the offence. Going by the F.I.R., it is the specific case of the prosecution that, while the accused was standing with the contraband at the rear side of Crl.R.P. No.868 of 2002 :-

7. :- the toddy shop No.54 at Pallikoottumma in Ramankary Village, he was arrested and seized the contraband. The accused had adduced defence evidence by producing Exts.D1 and D2 and examining D.Ws.1 and 2. The abkari licence issued to toddy shop No.54 of Ramankary Village is marked as Ext.D1. Going by

Ext.D1, it is seen that the said toddy shop is situated in Vezhapra muri of Ramankary Village. Moreover, the boundaries of the property wherein the said shop situates does not show the 'chira' as described in the prosecution case. There is no material to show that Pallikoottumma and Vezhapra are one and the same place. Thus, the difference as regards the place of occurrence makes a suspicious circumstance as regards the place of detection and the arrest of the accused. Therefore, I am of the opinion that even though the evidence of P.Ws.1 and 3 are corroborative, their evidence does not tally with Ext.D1 produced by the accused in defence evidence. Even though in the Crl.R.P. No.868 of 2002 -:

8. :- mahazar, it is stated that the arrest memo had been prepared at the time of arrest, the same is not produced before the court or brought out in evidence by the prosecution. Therefore, the suspicion with respect to the arrest of the accused at the time and place as alleged by the prosecution is fortified by the absence of arrest memo in evidence. It is pertinent to note that it is the prosecution case that the contraband has seized from the body of the accused while he was carrying the same for sale. When detection of the contraband is from the body of the accused himself, it is incumbent upon the prosecution to prove the arrest of the accused from the place and at the time as alleged by the prosecution. But, in the instant case, the arrest and detection said to have been done by P.W.3 along with P.W.1 is not supported by the arrest memo which is liable to be produced by the prosecution. Per contra, Ext.D1 licence proves that the said toddy shop No.54 is situated at Vezhapra a Crl.R.P. No.868 of 2002 -:

9. :- place which is not referred in any of the prosecution documents said to have been prepared contemporaneously at the time of arrest. Therefore, I am inclined to hold that the prosecution has failed to prove beyond doubt the arrest of the accused from the place and at the time as alleged by the prosecution. It follows that detection of the offence as alleged by the prosecution is also suspicious and unreliable to base conviction.

8. Another point raised by the accused in this revision petition is that sampling is not proper and vitiated by material irregularity. It is the case of the revision petitioner that the label seen in M.O.1 does not contain the signatures of the

accused or the witnesses who are said to have witnessed the detection of the offence and sampling which was taken place thereunder contemporaneously. When P.W.3 was examined, he unequivocally deposed that he is not sure whether the signature of the accused or CrI.R.P. No.868 of 2002 -:

10. :- the witnesses were obtained at the time of sampling. When he was confronted with M.O.1, he also admitted that in the label affixed on M.O.1, neither the signature of the accused nor the witnesses are seen. In short, it stands proved that the label found in M.O.1 does not contain either the signature of the accused or the witnesses. Thus, the authenticity of the sampling is under suspicion and it cannot be held that the sample which was taken at the spot is the sample which reached at the hands of the Forensic Science Laboratory. In this analysis, I hold that sampling and its reliability are vitiated by the procedural irregularity and no reliance can be placed on the analysis report.

9. Consequently, no conviction can be entered on the basis of the Chemical Analyst's report. Therefore, the prosecution miserably failed to prove that the accused was found in possession of the alcohol in violation of the provisions of the Abkari Act. I find that the courts below miserably failed to find out the CrI.R.P. No.868 of 2002 -:

11. :- material irregularity and suspicious circumstances centers around the arrest and sampling of the contraband. Consequently, I set aside the conviction entered and the sentence imposed on the revision petitioner under the impugned judgment and he is acquitted of the offence under Sec.55(a) of the Abkari Act for which he was convicted and sentenced. This Criminal Revision Petition is allowed. Sd/- (K. HARILAL, JUDGE) Nan/ //true copy// P.S. to Judge CrI.R.P. No.868 of 2002 -:

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