

Sunitha Vs. State of Kerala

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Court : Kerala

Decided On : Feb-03-2011

Reported in : ILR2011(1)Ker152

Judge : Thomas P. Joseph, J.

Acts : The Abkari Act - Sections 55(g), 8(1), 8(2); [Constitution of India](#) - Article 226

Appeal No. : W.P.(C). Nos.37711 of 2009 And 26859 of 2010

Appellant : Sunitha

Respondent : State of Kerala

Advocate for Pet/Ap. : SRI.R.SURAJ KUMAR, Adv.

Judgement :

1. These petitions are filed by the common petitioner who is involved in two cases for offences punishable under the Abkari Act (for short, "the Act"). She complains that the Excise Officials/Police Officers who detected and investigated the offence are enmical towards her for various reasons, there is no impartial investigation of the case and hence the innocence of petitioner could not be brought out. Hence, intervention of this Court is prayed for under Article 226 of the Constitution to direct investigation by an impartial agency.

2. I have heard learned counsel for petitioner and the learned Public Prosecutor. According to learned Public Prosecutor there is no reason why the investigation should change hands having regard to the facts and circumstances of the case.

3. In W.P.(C) No.37711 of 2009 petitioner is involved in CR.No.59 of 2009 of Punalur Excise Range Office for offences punishable under Sections 55 (g), 8(1) and 8(2) of the Act. Prosecution case is that petitioner allegedly distilled illicit arrack in her compound which was detected by the Excise Inspector and party on 07.8.2009. It is the further case of the prosecution that about 30 litres of arrack with instruments and utensils for distilling were seized from the compound of petitioner for which a contemporaneous record was prepared by the Detecting Officer and attested by witnesses from the locality. Learned counsel contends that though Ext.P1. Mahazar prepared by the Detecting Officer stated that at the time of alleged detention the house of petitioner was found locked, the daughter of petitioner was very much present in the house and the house was not locked. Articles seized from a nearby compound not belonging to the petitioner were brought into the compound of petitioner and a false case was registered against her. The reason is that husband of petitioner was accused in certain abkari cases and he went abroad. In view of that, she is being falsely implicated in the case.

4. In W.P.(C) No.26859 of 2010 petitioner is allegedly involved in Crime No.478 of 2010 registered by the Kulathupuzha Police. It is alleged that on information received by the Sub Inspector on 07.06.2010, he inspected the premises of petitioner and seized about ten liters illicit arrack kept in a 35 liters capacity can and about 450 liters of wash along with instruments and utensils for distilling for which Ext.P1, mahazar was drawn. Petitioner alleges that the Sub Inspector and party are on enmical terms with her for the reason that on 11.01.2010 the Sub Inspector and party had been to her house and misbehaved with her for which she had complained to the Superintendent of Police. The Sub Inspector was warned by his superior officers and on account of that, the Sub Inspector was enmical towards her. She has also a case that one Rajendran, Police Constable attached to the Kulathupuzha Police Station had an illicit affair with a lady residing at 11th Mile, concerning which Kudumbasree workers informed the superior officers and the said Rajendran was under the impression that petitioner is behind the

information given. For the said reason the Kulathupuzha Police is enmical towards the petitioner.

5. In W.P.(C) No.37711 of 2009 the Circle Inspector of Excise, Punalur has filed a statement on behalf of respondent No.3. Details of the alleged incident and detection of offence are stated. In paragraph 4 of the statement it is stated that petitioner had made frivolous complaints before the Deputy Commissioner of Excise, Kollam claiming that she is innocent and she is charged in the case on account of the enmity to her husband and thereon the Deputy Commissioner of Excise instructed the Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad, Kollam to enquire into the matter. Enquiry revealed that the allegations made by petitioner are incorrect. It is further stated that on enquiry it is revealed that petitioner is engaged in illicit distilling of arrack and several complaints were received from peoples' representatives as well as social workers.

6. In W.P.(C) No.26859 of 2010 a statement is filed by the District Superintendent of Police, Kollam where also details of alleged incident and detection of offences are referred to. It is stated that there was meticulous investigation in the case conducted by the officers concerned.

7. It is contended by learned counsel that there was no possibility of alleged distilling occurring at the places referred to by the Excise Officials/Police Officers. None of the residents of the locality were questioned or made to attest the mahazars prepared by the Detecting Officers. These are matters which petitioner has to bring out when the Detecting/Investigating Officer is in the box. I do not find reason to think that the investigation is either not impartial or is intended to frame petitioner in a false charge. Allegation is that since the husband of petitioner is involved abkari cases, Excise Officials are enmical towards her. That is a matter which the petitioner has to establish in the course of trial. So far as Crime No.478 of 2010 is concerned, petitioner has a contention that she had preferred a complaint against the Detecting Officer and the Constable (Rajendran) of Kulathupuzha Police Station. Petitioner has to prove those matters and show that the alleged detection of the offence is either not probable or is not free from doubt. It is open to her to bring out the inadequacies and suspicious circumstances if any

in the investigation of the cases. On the facts and circumstances of the case I am not inclined to direct that the investigation must be handed over to another officer. Resultantly without prejudice to the right of petitioner to take proper defence in the trial court, these petitions are dismissed. I make it clear that any observation made in this judgment shall not influence the trial court in the matter of the decision to be taken in the cases.

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